



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 68**

**[EPA-HQ-OEM-2015-0725; FRL-9975-20-OLEM]**

**RIN 2050-AG95**

**Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is requesting public comment on several proposed changes to the final Risk Management Program Amendments rule (Amendments rule) issued on January 13, 2017. EPA is proposing to rescind amendments relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. EPA is also proposing to modify amendments relating to local emergency coordination and emergency exercises, and to change the compliance dates for these provisions.

**DATES:** *Comments.* Comments and additional material must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Public testimony:* Send requests to present oral testimony by June 8, 2018.

*Public Hearing.* The EPA will hold a public hearing on this proposed rule on June 14, 2018 in Washington, DC.

**ADDRESSES:** Comments. Submit comments and additional materials, identified by docket EPA-HQ-OEM-2015-0725 to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Public Hearing.* A public hearing will be held in Washington, DC on June 14, 2018 at William J. Clinton East Building Room 1153 (Map Room), 1201 Constitution Ave. NW, Washington DC 20460. The hearing will convene at 9:00 a.m. through 8:00 p.m. The sessions will run from 9:00 a.m. to 12:00 p.m., with a break between 12:00 p.m. and 1:00 p.m., continuing from 1:00 p.m. to 4:30 p.m., with a break from 4:30 to 5:30 p.m., and continuing from 5:30 p.m. to 8:00 p.m. Persons wishing to preregister may be assigned a time according to this schedule. The evening session beginning at 5:30 p.m. will be extended one hour after all scheduled comments have been heard to accommodate those wishing to make a comment as a

walk-in registrant. Please register at <https://www.epa.gov/rmp/public-hearing-proposed-changes-risk-management-program-rmp-rule> to speak at the hearing. The last day to preregister in advance to speak at the hearing is June 8, 2018. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. If you require the service of a translator or special accommodations such as audio description, we ask that you pre-register for the hearing, on or before June 8, 2018 to allow sufficient time to arrange such accommodations.

The hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering Federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma or the state of Washington, you must present an additional form of identification to enter the Federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on Federal property for security reasons.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

**FOR FURTHER INFORMATION CONTACT:** James Belke, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave., NW (Mail Code 5104A), Washington, DC, 20460; telephone number: (202) 564-8023; email address: belke.jim@epa.gov, or Kathy Franklin, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave., NW (Mail Code 5104A), Washington, DC, 20460; telephone number: (202) 564-7987; email address: franklin.kathy@epa.gov.

Electronic copies of this Notice of Proposed Rulemaking (NPRM) and related news releases are available on EPA's website at <http://www.epa.gov/rmp>. Copies of this NPRM are also available at <http://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:** *Acronyms and Abbreviations.* We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACC                    American Chemistry Council

AFPM                  American Fuel & Petrochemical Manufacturers

BATF	Bureau of Alcohol, Tobacco, Firearms, and Explosives
CAA	Clean Air Act
CAAA	Clean Air Act Amendments of 1990
CBI	confidential business information
CFATS	Chemical Facility Anti-Terrorism Standards
CFR	Code of Federal Regulations
CSAG	Chemical Safety Advocacy Group
CSISSFRA	Chemical Safety Information, Site Security and Fuels Regulatory Relief Act
CVI	Chemical-terrorism Vulnerability Information
DHS	Department of Homeland Security
E.O.	Executive Order
DOT	Department of Transportation
EPA	Environmental Protection Agency
EPCRA	Emergency Planning & Community Right-To-Know Act
FOIA	Freedom of Information Act
FR	Federal Register
ICR	Information Collection Request
ISD	inherently safer design
IST	inherently safer technology
LEPC	local emergency planning committee
NAICS	North American Industrial Classification System

NPRM	Notice of Proposed Rulemaking
OCA	offsite consequences analysis
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PHA	process hazard analysis
PRA	Paperwork Reduction Act
PSI	process safety information
PSM	Process Safety Management
RIA	Regulatory Impact Analysis
RFA	Regulatory Flexibility Act
RFI	request for information
RMP	Risk Management Program
RTC	Response to Comments
SBAR	Small Business Advocacy Review
SBREFA	Small Business Regulatory Enforcement Fairness Act
SDS	safety data sheet
SER	small entity representative
SERC	state emergency response commission
STAA	safer technology and alternatives analysis
TQ	threshold quantity
U.S.C.	United States Code
UMRA	Unfunded Mandates Reform Act

*Organization of this Document.* The contents of this preamble are:

**I. General Information**

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- B. EPA Authority to Reconsider and Revise the RMP Rule
- C. Overview of EPA's Risk Management Program Regulations

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- A. Rescind incident investigation, third-party audit, safer technology and alternatives analysis (STAA), and other prevention program amendments
- B. Rescind information availability amendments
- C. Modify local coordination amendments
- D. Modify exercise amendments
- E. Revise emergency response contacts provided in RMP
- F. Revise compliance dates
- G. Corrections to cross referenced CFR sections

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- A. Maintain consistency in accident prevention requirements
- B. Address security concerns
- C. Address BATF finding on West Fertilizer incident
- D. Reduce unnecessary regulations and regulatory costs
- E. Revise compliance dates to provide necessary time for program changes
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- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
- C. Paperwork Reduction Act (PRA)
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- F. Executive Order 13132: Federalism
- G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
- J. National Technology Transfer and Advancement Act (NTTAA)
- K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

**I. General Information**

*A. Does this action apply to me?*

This rule applies to those facilities (referred to as “stationary sources” under the CAA) that are subject to the chemical accident prevention requirements at 40 CFR part 68. This includes stationary sources holding more than a threshold quantity (TQ) of a regulated substance in a process. Table 1 provides industrial sectors and the associated NAICS codes for entities potentially affected by this action. The Agency’s goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the introductory section of this action under the heading entitled **FOR FURTHER INFORMATION CONTACT**.

TABLE 1- INDUSTRIAL SECTORS AND ASSOCIATED NAICS CODES FOR ENTITIES  
POTENTIALLY AFFECTED BY THIS ACTION

Sector	NAICS Code
Administration of Environmental Quality Programs	924
Agricultural Chemical Distributors	
Crop Production	111
Animal Production and Aquaculture	112
Support Activities for Agriculture and Forestry	115
Farm Supplies Merchant Wholesalers	42491
Chemical Manufacturing	325
Chemical and Allied Products Merchant Wholesalers	4246
Food Manufacturing	311
Beverage Manufacturing	3121
Oil and Gas Extraction	211
Other <sup>1</sup>	44, 45, 48, 54, 56, 61, 72
Other manufacturing	313, 326, 327, 33
Other Wholesale	
Merchant Wholesalers, Durable Goods	423

<sup>1</sup> For descriptions of NAICS codes, see <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.



Merchant Wholesalers, Nondurable Goods	424
Paper Manufacturing	322
Petroleum and Coal Products Manufacturing	324
Petroleum and Petroleum Products Merchant Wholesalers	4247
Utilities	221
Warehousing and Storage	493

*B. What action is the Agency taking?*

1. Purpose of the Regulatory Action

The purpose of this action is to propose changes to the Risk Management Program Amendments final rule in order to address issues raised in three petitions for reconsideration received by EPA, as well as other issues that EPA believes warrant reconsideration.

On January 13, 2017, the EPA issued a final rule (82 FR 4594) amending 40 CFR part 68, the chemical accident prevention provisions under section 112(r) of the CAA (42 U.S.C. 7412(r)). The amendments addressed various aspects of risk management programs, including prevention programs at stationary sources, emergency response preparedness requirements, information availability, and various other changes to streamline, clarify, and otherwise technically correct the underlying rules. Prior to the rule taking effect, EPA received three petitions for reconsideration of the rule under CAA section 307(d)(7)(B), two from industry groups<sup>2</sup> and one from a group of states.<sup>3</sup> Under that provision, the Administrator is to commence a reconsideration proceeding if, in the Administrator's judgement, the petitioner raises an

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<sup>2</sup> RMP Coalition's Petition for Reconsideration and Request for Agency Stay Pending Reconsideration of Final RMP rule (82 FR 4594, January 13, 2017), February 28, 2017. Hogan Lovells US LLP, Washington, DC. Document ID: EPA-HQ-OEM-2015-0725-0759 and

Chemical Safety Advocacy Group (CSAG)'s Petition and Reconsideration and Stay Request of the Final RMP rule (82 FR 4594, January 13, 2017) March 13, 2017, Hunton & Williams, San Francisco, CA, EPA-HQ-OEM-2015-0725-0766 and EPA-HQ-OEM-2015-0725-0765 (supplemental petition).

<sup>3</sup> Petition for Reconsideration and Stay on behalf of States of Louisiana, Arizona, Arkansas, Florida, Kansas, Texas, Oklahoma, South Carolina, Wisconsin, West Virginia, and the Commonwealth of Kentucky with respect to Risk Management Program Final Rule, (82 FR 4594, January. 13, 2017), March 14, 2017. State of Louisiana, Department of Justice, Attorney General. EPA-HQ-OEM-2015-0725-0762.

objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule.

In a letter dated March 13, 2017, the Administrator responded to the first of the reconsideration petitions received by announcing the convening of a proceeding for reconsideration of the Risk Management Program Amendments.<sup>4</sup> As explained in that letter, having considered the objections raised in the petition, the Administrator determined that the criteria for reconsideration have been met for at least one of the objections. This proposal addresses the issues raised in all three petitions for reconsideration, as well as other issues that EPA believes warrant reconsideration.

## 2. Summary of the Provisions of the Regulatory Action

EPA proposes to rescind almost all the requirements added to the accident prevention provisions program of Subparts C (for Program 2 processes) and D (for Program 3 processes). These include rescission of all requirements for third-party compliance audits (§§ 68.58, 68.59, 68.79 and 68.80), safer technology and alternatives analysis (§ 68.67(c)(8)) for facilities with Program 3 regulated processes in North American Industrial Classification System (NAICS) codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing) and rescinding the words “for each covered process” from the compliance audit provisions in §§ 68.58 and 68.79. EPA also proposes to rescind in § 68.50(a)(2), the requirement for the hazard review to include findings from incident investigations. For incident investigations (§§ 68.60 and 68.81), EPA proposes to rescind:

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<sup>4</sup> EPA-HQ-OEM-2015-0725-0762.

requirements for conducting root cause analysis for incident investigations; for the incident investigation report to have specified added data elements, a schedule to address recommendations, a 12-month completion deadline, and for § 68.60 only, a five-year record retention (EPA notes that the existing rule's five-year record retention requirement at § 68.200 will still apply); and for investigating any incident resulting in catastrophic releases that also results in the affected process being decommissioned or destroyed. In §§ 68.60 and 68.81, EPA also proposes to rescind clarifying text "(i.e., a near miss)" that was added to describe an incident that could reasonably have resulted in a catastrophic release. In § 68.60, EPA proposes to change the term investigation "report(s)" to "summary(ies)" and rescind the requirement for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident.

EPA proposes to rescind employee training requirements (§§ 68.54 and 68.71) that would apply to supervisors responsible for process operations as well as rescind minor wording changes involving description of employees operating a process in § 68.54. EPA proposes to rescind the requirement in § 68.65 for the owner or operator to keep process safety information up-to-date and the requirement in § 68.67(c)(2) for the process hazard analysis to address the findings from all incident investigations required under § 68.81, as well as any other potential failure scenarios. EPA will retain two changes that would revise the term "Material Safety Data Sheets" to "Safety Data Sheets (SDS)" in §§ 68.48 and 68.65.

Alternatively, EPA proposes to rescind all of the above changes to Subparts C and D except for the requirement in § 68.50(a)(2) for the hazard review to include findings from incident investigations, the term "report(s)" in place of the word "summary(ies)" in § 68.60, the

requirement in § 68.60 for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident, the requirements in §§ 68.54 and 68.71 for training requirements to apply to supervisors responsible for process operations and minor wording changes involving the description of employees operating a process in § 68.54, and the two changes that would revise the term “Material Safety Data Sheets” to “Safety Data Sheets (SDS)” in §§ 68.48 and 68.65.

EPA proposes to rescind the following definitions in § 68.3: *active measures*, *inherently safer technology or design*, *passive measures*, *practicability*, and *procedural measures* related to amendments to requirements in § 68.67; *root cause* related to amendments to requirements in § 68.60 and § 68.81, and *third-party audit* related to amendments to requirements in §§ 68.58 and 68.79 and added §§ 68.59 and 68.80.

EPA proposes to modify the local emergency response coordination amendments by deleting the phrase in § 68.93(b), “...and any other information that local emergency planning and response organizations identify as relevant to local emergency response planning” or alternatively replace it with the phrase “... and other information necessary for developing and implementing the local emergency response plan.” EPA would retain the requirement for owners or operators to provide the local emergency planning and response organizations with the stationary source’s emergency response plan if one exists, emergency action plan, and updated emergency contact information, as well as the requirement for the owner or operator to request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss these materials. EPA also proposes to

incorporate appropriate classified information and CBI protections to regulated substance and stationary source information required to be provided under § 68.93.

EPA is proposing to modify the exercise program provisions of § 68.96(b), by removing the minimum frequency requirement for field exercises. EPA proposes to establish more flexible scope and documentation provisions for both field and tabletop exercises by only recommending, and not requiring, items specified for inclusion in exercises and exercise evaluation reports, while still requiring documentation of both types of exercises. EPA would retain the notification exercise requirement of § 68.96(a) and the provision for alternative means of meeting exercise requirements of § 68.96(c).

Alternatively, EPA is considering whether to fully rescind the field and tabletop exercise provisions of § 68.96(b). Under this alternative proposal, EPA would retain the notification exercise provision of § 68.96(a), but revise it and § 68.93(b) to remove any reference to tabletop and field exercises, while also modifying the provision in § 68.96(c) for alternative means of meeting exercise requirements so that it applies only to notification exercises.

EPA proposes to rescind the requirements for providing to the public upon request, chemical hazard information and access to community emergency preparedness information in § 68.210 (b) through (d), as well as rescind the requirement to provide the “other chemical hazard information such as that described in paragraph (b) of this section” at public meetings required under § 68.210 (e). EPA will retain the requirement in § 68.210 (e) for owner/operator of a stationary source to hold a public meeting to provide accident information required under § 68.42 (b) no later than 90 days after any accident subject to reporting under § 68.42. EPA will retain the change to § 68.210 (a) which added 40 CFR part 1400 as a limitation on RMP availability (addresses restrictions on disclosing RMP offsite consequence analysis under

CSISSFRRRA)<sup>5</sup>, and the provision for control of classified information in § 68.210 (f). EPA proposes to delete the provision for CBI in § 68.210 (g), because the only remaining information required to be provided at the public meeting is the source's five-year accident history, which § 68.151(b)(3) prohibits the owner or operator from claiming as CBI.

EPA proposes to rescind requirements to report in the risk management plan any information associated with the rescinded provisions of third-party audits, incident investigation, safer technology and alternatives analysis, and information availability to the public. EPA proposed to slightly modify the emergency response contact information required by § 68.180(a)(1) to be provided in a facility's RMP.

EPA proposes to delay the rule's compliance dates in § 68.10 to one year after the effective date of a final rule for the emergency coordination provisions, four years after the effective date of a final rule for emergency exercises, two years after the effective date for the public meeting provision and five years after the effective date of the final rule for those remaining risk management plan provisions added as the result of the Amendments rule or changed by the Reconsideration rule. Under the current proposal, owners and operators would be still be required to have exercise plans and schedules meeting the requirements of § 68.96 in place within four years of the effective date of a final rule, but would have up to one additional year to perform their first notification drill, up to three additional years to conduct their first tabletop exercise and no specified deadline for the first field exercise, other than that established by the owner or operator's exercise schedule in coordination with local response agencies.

The CFR amendatory language that appears at the end of this Federal Register notice (see **PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS**) proposes changes to

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<sup>5</sup> Chemical Safety Chemical Safety Information, Site Security and Fuels Regulatory Relief Act.

the regulatory text that would have included changes from the final RMP Amendments rule if it was in effect. For easier review of the proposed changes, EPA has provided a copy of 40 CFR part 68 with the Amendments rule regulatory text changes in redline/strikeout format, which is available in the rulemaking docket.<sup>6</sup>

*C. What is the Agency's authority for taking this action?*

The Agency's procedures in this rulemaking are controlled by CAA section 307(d). The statutory authority for this action is provided by section 112(r) of the CAA as amended (42 U.S.C. 7412(r)). Each of the portions of the Risk Management Program rule we propose to modify in this document are based on section 112(r) of the CAA as amended (42 U.S.C. 7412(r)). EPA's authority for convening a reconsideration proceeding for certain issues is found under CAA section 307(d)(7)(B) or 42 U.S.C. 7607(d)(7)(B). A more detailed explanation of these authorities can be found in Section II.B. of this preamble, *EPA Authority to Reconsider and Revise the RMP Rule*.

*D. What are the incremental costs and benefits of this action?*

1. Summary of Potential Cost Savings

Approximately 12,500 facilities have filed current RMPs with EPA and are potentially affected by the proposed rule changes. These facilities range from petroleum refineries and large chemical manufacturers to water and wastewater treatment systems; chemical and petroleum wholesalers and terminals; food manufacturers, packing plants, and other cold storage facilities with ammonia refrigeration systems; agricultural chemical distributors; midstream gas plants; and a limited number of other sources, including Federal installations, that use RMP-regulated

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<sup>6</sup> Regulatory Text Redline/Strikeout Changes for Proposed RMP Reconsideration Rule, April 26, 2018.

substances. Table 2 presents the number of facilities according to the RMP reporting as of February 2015 by industrial sector and chemical use.

TABLE 2 - NUMBER OF AFFECTED FACILITIES BY SECTOR

Sector	NAICS Codes	Total Facilities	Chemical Uses
Administration of environmental quality programs (i.e., governments)	924	1,923	Use chlorine and other chemicals for treatment
Agricultural chemical distributors/wholesalers	111, 112, 115, 42491	3,667	Store ammonia for sale; some in NAICS 111 and 115 use ammonia as a refrigerant
Chemical manufacturing	325	1,466	Manufacture, process, store
Chemical wholesalers	4246	333	Store for sale
Food and beverage manufacturing	311, 312	1,476	Use—mostly ammonia as a refrigerant
Oil and gas extraction	211	741	Intermediate processing (mostly regulated flammable substances and flammable mixtures)
Other	44, 45, 48, 54, 56, 61, 72	248	Use chemicals for wastewater treatment, refrigeration, store chemicals for sale
Other manufacturing	313, 326, 327, 33	384	Use various chemicals in manufacturing process, waste treatment
Other wholesale	423, 424	302	Use (mostly ammonia as a refrigerant)
Paper manufacturing	322	70	Use various chemicals in pulp and paper manufacturing
Petroleum and coal products manufacturing	324	156	Manufacture, process, store (mostly regulated flammable substances and flammable mixtures)
Petroleum wholesalers	4247	276	Store for sale (mostly regulated flammable substances and flammable mixtures)
Utilities	221 (except 22131, 22132)	343	Use chlorine (mostly for water treatment)
Warehousing and	493	1,056	Use mostly ammonia as a



storage			refrigerant
Water/wastewater Treatment Systems	22131, 22132	102	Use chlorine and other chemicals
<b>Total</b>		<b>12,542</b>	

Table 3 presents a summary of the annualized cost savings estimated in the regulatory impact analysis<sup>7</sup>. In total, EPA estimates annualized cost savings of \$87.9 million at a 3% discount rate and \$88.4 million at a 7% discount rate.

TABLE 3- SUMMARY OF ANNUALIZED COST SAVINGS (MILLIONS, 2015 DOLLARS)

<b>Provision</b>	<b>3%</b>	<b>7%</b>
Third-party Audits	(9.8)	(9.8)
Incident Investigation/Root Cause	(1.8)	(1.8)
STAA	(70.0)	(70.0)
Information Availability	(3.1)	(3.1)
Rule Familiarization (net)	(3.2)	(3.7)
Total Cost Savings*	(87.9)	(88.4)

\*Values may not sum due to rounding

Most of the annual cost savings under the proposed rule are due to the repeal of the STAA provision (annual savings of \$70 million), followed by third-party audits (annual savings of \$9.8 million), rule familiarization (annual net savings of \$3.7 million), information availability (annual savings of \$3.1 million), and root-cause incident investigation (annual savings of \$1.8 million).

## 2. Summary of Potential Benefits and Benefit Reductions

<sup>7</sup> A full description of costs and benefits for this proposed rule can be found in the “Regulatory Impact Analysis, Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7).” This document is available in the docket for this rulemaking (Docket ID Number EPA-HQ-OEM-2015-0725).

The RMP Amendments Rule produced a variety of benefits from prevention and mitigation of future RMP and non-RMP accidents at RMP facilities, avoided catastrophes at RMP facilities, and easier access to facility chemical hazard information. The proposed Reconsideration rule would largely retain the revised local emergency coordination and exercise provisions of the 2017 Amendments final rule, which convey mitigation benefits. The proposed rescission of the prevention program requirements (i.e., third-party audits, incident investigation, STAA), would result in a reduction in the magnitude of these benefits. The proposed rescission of the chemical hazard information availability provision would result in a reduction of the information sharing benefit, although a portion of this benefit from the Amendments rule would still be conveyed by the public meeting, emergency coordination and exercise provisions. The proposed rulemaking would also convey the benefit of improved chemical site security, by modifying previously open-ended information sharing provisions of the Amendments rule that might have resulted in an increased risk of terrorism against regulated sources. See the RIA for additional information on benefits and benefit reductions.

## **II. Background**

### *A. Events Leading to this Action*

On January 13, 2017, the EPA issued a final rule amending 40 CFR part 68, the chemical accident prevention provisions under section 112(r) of the CAA (42 U.S.C. 7412(r)). The amendments addressed various aspects of risk management programs, including prevention programs at stationary sources, emergency response preparedness requirements, information availability, and various other changes to streamline, clarify, and otherwise technically correct the underlying rules. This rulemaking is known as the “Risk Management Program

Amendments” or “RMP Amendments” rule. For further information on the Risk Management Program Amendments, see 82 FR 4594 (January 13, 2017).

On January 26, 2017, the EPA published a final rule delaying the effective date of the Risk Management Program Amendments from March 14, 2017 to March 21, 2017, see 82 FR 8499. This revision to the effective date of the Risk Management Program Amendments was part of an EPA final rule implementing a memorandum dated January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review.” This memorandum directed the heads of agencies to postpone, until 60 days after the date of its issuance, the effective date of rules that were published prior to January 20, 2017, but which had not yet become effective.

In a letter dated February 28, 2017, a group known as the “RMP Coalition,” submitted a petition for reconsideration of the Risk Management Program Amendments (“RMP Coalition Petition”) as provided for in CAA section 307(d)(7)(B) (42 U.S.C. 7607(d)(7)(B)).<sup>8</sup> Under that provision, the Administrator is to commence a reconsideration proceeding if, in the Administrator’s judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review and if the objection is of central relevance to the outcome of the rule. The Administrator may stay the effective date of the rule for up to three months during such reconsideration. On March 13, 2017, the Chemical Safety Advocacy Group (“CSAG”) also submitted a petition (“CSAG Petition”) for reconsideration and stay (including a

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<sup>8</sup>RMP Coalition’s Petition for Reconsideration and Request for Agency Stay Pending Reconsideration of Final RMP rule (82 FR 4594, January 13, 2017), February 28, 2017. Hogan Lovells US LLP, Washington, DC. Document ID: EPA-HQ-OEM-2015-0725-0759

March 14, 2017 supplement to the CSAG Petition).<sup>9</sup> On March 14, 2017, the EPA received a third petition for reconsideration and stay from the States of Louisiana, joined by Arizona, Arkansas, Florida, Kansas, Oklahoma, South Carolina, Texas, Wisconsin, West Virginia, and the Commonwealth of Kentucky (the “States Petition”).<sup>10</sup> The Petitioners CSAG and States also requested that EPA delay the various compliance dates of the Risk Management Program Amendments.

In a letter dated March 13, 2017, the Administrator announced the convening of a proceeding for reconsideration of the Risk Management Program Amendments (a copy of this letter is included in the docket for this rule, Docket ID No. EPA-HQ-OEM-2015-0725).<sup>11</sup> As explained in that letter, having considered the objections raised in the RMP Coalition Petition, the Administrator determined that the criteria for reconsideration have been met for at least one of the objections. EPA issued a three-month (90-day) administrative stay of the effective date of the Risk Management Program Amendments until June 19, 2017 (82 FR 13968, March 16, 2017). EPA subsequently further delayed the effective date of the Risk Management Program Amendments until February 19, 2019, via notice and comment rulemaking (82 FR 27133, June 14, 2017). The purpose of this Delay Rule was to allow EPA to conduct a reconsideration proceeding and to consider other issues that may benefit from additional comment. This proposed rulemaking is the next step in EPA’s reconsideration of the Risk Management Program Amendments.

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<sup>9</sup> Chemical Safety Advocacy Group (CSAG)’s Petition and Reconsideration and Stay Request of the Final RMP rule (82 FR 4594, January 13, 2017) March 13, 2017, Hunton & Williams, San Francisco, CA, EPA-HQ-OEM-2015-0725-0766 and EPA-HQ-OEM-2015-0725-0765 (supplemental petition).

<sup>10</sup> Petition for Reconsideration and Stay on behalf of States of Louisiana, Arizona, Arkansas, Florida, Kansas, Texas, Oklahoma, South Carolina, Wisconsin, West Virginia, and the Commonwealth of Kentucky with respect to Risk Management Program Final Rule, (82 FR 4594, January 13, 2017), March 14, 2017. State of Louisiana, Department of Justice, Attorney General. EPA-HQ-OEM-2015-0725-0762.

<sup>11</sup> EPA-HQ-OEM-2015-0725-0758

*B. EPA Authority to Reconsider and Revise the RMP Rule*

1. What are the procedural requirements for reconsidering the RMP Amendments?

Congress granted the EPA the authority for rulemaking on the prevention of chemical accidental releases as well as the correction or response to such releases in subparagraphs (A) and (B) of CAA section 112(r)(7). The scope of this authority is discussed in more detail below. The EPA has used its authority under CAA section 112(r)(7) to issue the RMP Rule (61 FR 31668, June 20, 1996), the 2017 RMP Amendments, and this reconsideration document and proposed rulemaking.

When promulgating rules under CAA section 112(r)(7)(A) and (B), the EPA must follow the procedures for rulemaking set out in CAA section 307(d). See CAA sections 112(r)(7)(E) and 307(d)(1)(C). Among other things, section 307(d) sets out requirements for the content of proposed and final rules, the docket for rulemakings, requirement to provide an opportunity for oral testimony on the proposed rulemaking, the length of time for comments, and judicial review. Only objections raised with reasonable specificity during the public comment period may be raised during judicial review.

Section 307(d) has a provision that requires the EPA to convene a reconsideration proceeding when the person makes an objection that meets specific criteria set out in CAA section 307(d)(7)(B). The statute provides:

If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the comment period] or if the grounds for such objection arose after the period for public comment (but within the time period specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

As noted in the Background section above, when several parties petitioned for reconsideration of the 2017 RMP Amendments, the Administrator found that at least one objection the petitioners raised met the specific criteria for mandatory reconsideration and therefore he convened a proceeding for reconsideration under CAA section 307(d)(7)(B). While section 307(d)(7)(B) sets out criteria for when the Agency must conduct a reconsideration, the Agency has the discretion to reopen, revisit, amend and revise a rule under the rulemaking authority granted in CAA section 112(r)(7) by following the procedures of CAA 307(d) at any time, including while it conducts a reconsideration proceeding required by CAA section 307(d)(7)(B). In light of the fact that EPA must already grant petitioners “the same procedural rights as would have been afforded had the information been available at the time the rule was proposed,” it is efficient to conduct a discretionary amendment proceeding simultaneously with the reconsideration proceeding.

## 2. What is EPA’s substantive authority under Clean Air Act section 112(r)(7)?

Congress granted EPA authority for accident prevention rules under two provisions in CAA section 112(r)(7). Under subparagraph (A) of CAA section 112(r)(7), EPA may set rules addressing the prevention, detection, and correction of accidental releases of substances listed by EPA by rule (“regulated substances” listed in the tables in 40 CFR 68.130). Such rules may include data collection, training, design, equipment, work practice, and operational requirements. EPA has wide discretion regarding the effective date (“as determined by the Administrator, assuring compliance as expeditiously as practicable”).

Under subparagraph (B) of CAA section 112(r)(7), Congress authorized EPA to develop “reasonable regulations and appropriate guidance” that provide for the prevention and detection of accidental releases and the response to such releases, “to the greatest extent practicable.”

Congress required an initial rulemaking under this subparagraph by November 15, 1993.

Subparagraph (B) sets out a series of mandatory subjects to address, interagency consultation requirements, and discretionary provisions that allowed EPA to tailor requirements to make them reasonable and practicable. For example, the regulations needed to address “storage, as well as operations” and “emergency response after accidental releases;” EPA was to use the expertise of the Secretaries of Labor and Transportation in promulgating the regulations; and EPA had the discretion (“shall, as appropriate”) to recognize differences in “size, operations, processes . . . and the voluntary actions” of regulated sources to prevent and respond to accidental releases (CAA section 112(r)(7)(B)(i)). At a minimum, the regulations had to require stationary sources with more than a “threshold quantity to prepare and implement a risk management plan.” Such plans needed to provide for compliance with rule requirements under CAA section 112(r) and include a hazard assessment with release scenarios and an accident history, a release prevention program, and a response program (CAA section 112(r)(7)(B)(ii)). Plans were to be registered with EPA and submitted to various planning entities (CAA section 112(r)(7)(B)(iii)). The rules would apply to sources three years after promulgation or three years after a substance was first listed for regulation under CAA section 112(r). (CAA section 112(r)(7)(B)(i)).

In addition to the direction to use the expertise of the Secretaries of Labor and Transportation in subparagraph (B) of CAA section 112(r)(7), the statute required EPA to consult with these secretaries when carrying out the authority of CAA section 112(r)(7) and to “coordinate any requirements under [CAA section 112(r)(7)] with any requirements established for comparable purposes by” OSHA. (CAA section 112(r)(7)(D)). This consultation and coordination language derives from and expands upon provisions on hazard assessments in the bill that eventually passed the Senate as its version of the 1990 CAAA, section 129(e)(4) of S.

1630. The Senate committee report on this language notes that the purpose of the coordination requirement is to ensure that “requirements imposed by both agencies to accomplish the same purpose are not unduly burdensome or duplicative.” Senate Report at 244.<sup>12</sup> The mandate for coordination in the area of safer chemical processes was incorporated into the CAA in section 112(r)(7)(D) in the same legislation that Congress directed OSHA to promulgate a process safety standard that became the PSM standard. See CAAA of 1990 section 304.

The RMP Amendments and this reconsideration address three aspects of the Risk Management Program: requirements for prevention programs, emergency response provisions, and information disclosure. The prevention program provisions proposed to be rescinded in this document (auditing, incident investigation, and safer technologies and alternatives analysis) address the “prevention and detection of accidental releases.” The emergency coordination and exercises provisions in this rule modify existing provisions that provide for “response to such releases by the owners or operators of the sources of such releases.” The information disclosure provisions proposed to be rescinded or modified in this document are related to the development of “procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment.”<sup>13</sup> (CAA section 112(r)(7)(B)(i)).

In considering whether it is legally permissible for the Agency to rescind and/or modify provisions of the RMP Amendments rule while continuing to meet EPA’s obligations under CAA section 112(r), EPA notes that the CAA did not require EPA to promulgate the RMP

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<sup>12</sup> Clean Air Act Amendments of 1989, Report of the Committee on Environment and Public Works, U.S. Senate together with Additional and Minority Views to Accompany S. 1630. S. Report No. 101-228. 101st Congress, 1st Session, December 20, 1989. – “Senate Report” EPA-HQ-OEM-2015-0725-0645

<sup>13</sup> Incident investigation, compliance auditing, and STAA are also authorized as release prevention requirements pertaining to stationary source “design, equipment . . . and work practice” as well as “record-keeping [and] reporting.” Information disclosure is also authorized as “reporting.” CAA section 112(r)(7)(A).



Amendments rule. There are four provisions of CAA section 112(r) that require or authorize the Administrator to promulgate regulations. The first two relate to the list of regulated substances and their threshold quantities. CAA section 112(r)(3) required EPA to promulgate a list of at least 100 regulated substances. Section 112(r)(5) required EPA to establish, by rule, a threshold quantity for each listed substance. EPA met these obligations in 1994 with the publication of the list of regulated substances and threshold quantities (59 FR 4493, January 31, 1994). Section 112(r)(7) contains the other two regulatory provisions. Section 112(r)(7)(B) required EPA to publish accidental release prevention, detection, and response requirements and guidance (“...the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases”). EPA met this obligation in 1996 with the publication of the original RMP rule (61 FR 31668, June 20, 1996), and associated guidance documents published in the late 1990s. The other regulatory promulgation provision of section 112(r)(7) – section 112(r)(7)(A) – is permissive. Subparagraph (A) authorizes EPA to promulgate regulations but does not require it.

Therefore, EPA had met all of its regulatory obligations under section 112(r) prior to promulgating the RMP Amendments rule. In promulgating the RMP Amendments rule, EPA took a discretionary regulatory action in response to Executive Order 13650, “Improving Chemical Safety and Security.”<sup>14</sup> We have made discretionary amendments to the RMP rule several times without a dispute over our authority to issue discretionary amendments. See 64 FR

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<sup>14</sup> See 82 FR 4594, January 13, 2017: “Section 6(c) of Executive Order 13650 requires the Administrator of EPA to review the chemical hazards covered by the Risk Management Program and expand, implement and enforce the Risk Management Program to address any additional hazards.”

964 (January 6, 1999); 64 FR 28696 (May 26, 1999); 69 FR 18819 (April 9, 2004). As EPA's action in the RMP Amendments rule was discretionary, the Agency may take additional action to rescind or modify provisions of the RMP Amendments rule if the Agency finds that it is reasonable to do so.

### *C. Overview of EPA's Risk Management Program Regulations*

EPA's existing RMP regulation was published in two stages. The Agency published the list of regulated substances and TQs in 1994 (59 FR 4478, January 31, 1994) (the "list rule")<sup>15</sup> and published the RMP final regulation, containing risk management requirements for covered sources, in 1996 (61 FR 31668, June 20, 1996) (the "RMP rule").<sup>16,17</sup> Subsequent modifications to the list rule and RMP rule were made as discussed in the Amendments Rule (82 FR 4594, January 13, 2017 at 4600). Prior to development of EPA's 1996 RMP rule, OSHA published their Process Safety Management (PSM) standard in 1992 (57 FR 6356, February 24, 1992), as required by section 304 of the 1990 CAAA, using its authority under 29 U.S.C. section 653. The OSHA PSM standard can be found in 29 CFR 1910.119. Both the OSHA PSM standard and the EPA RMP rule aim to prevent or minimize the consequences of accidental chemical releases through implementation of management program elements that integrate technologies, procedures, and management practices. In addition to requiring implementation of management program elements, the RMP rule requires covered sources to submit (to EPA) a document

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<sup>15</sup> Documents and information related to development of the list rule can be found in the EPA docket for the rulemaking, docket number A-91-74.

<sup>16</sup> Documents and information related to development of the RMP rule can be found in EPA docket number A-91-73.

<sup>17</sup> 40 CFR part 68 applies to owners and operators of stationary sources that have more than a TQ of a regulated substance within a process. The regulations do not apply to chemical hazards other than listed substances held above a TQ within a regulated process.

summarizing the source's risk management program – called a Risk Management Plan (or RMP).

The EPA's risk management program requirements include conducting a worst-case scenario analysis and a review of accident history, coordinating emergency response procedures with local response organizations, conducting a hazard assessment, documenting a management system, implementing a prevention program and an emergency response program, and submitting a risk management plan that addresses all aspects of the risk management program for all covered processes and chemicals. A process at a source is covered under one of three different prevention programs (Program 1, Program 2 or Program 3) based on the threat posed to the community and the environment. Program 1 has minimal requirements and is for processes not classified in industrial sectors<sup>18</sup> specified for Program 3, that have not had an accidental release with offsite consequences in the last five years prior to submission of the source's risk management plan, and that have no public receptors within the worst case release scenario vulnerable zone for the process. Program 3 has the most requirements and applies to processes covered by the OSHA PSM standard (but not eligible for RMP Program 1) or classified in specified industrial sectors. Program 2 has fewer requirements than Program 3, and applies to any process not covered under Programs 1 or 3. Programs 2 and 3 both require a hazard assessment, a prevention program and an emergency response program, although Program 2 requirements are less extensive and more streamlined. For example, the Program 2 prevention program was intended to cover simpler processes located at smaller businesses and does not require the following process safety elements: management of change, pre-startup review,

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<sup>18</sup> See ten industry NAICS codes listed at § 68.10(d)(1) representing pulp mills, petroleum refineries, petrochemical manufacturing, alkalies and chlorine manufacturing, all other basic inorganic chemical manufacturing, cyclic crude and intermediates manufacturing, all other basic chemical manufacturing, plastic material and resin manufacturing, nitrogenous fertilizer manufacturing and pesticide and other agricultural chemicals manufacturing.

contractors, employee participation and hot work permits. The Program 3 prevention program is fundamentally identical to the OSHA PSM standard and designed to cover those processes in the chemical industry. For further explanation and comparison of the PSM standard and RMP requirements, see the “Process Safety Management and Risk Management Plan Comparison Tool” published by OSHA and EPA in October 2016.<sup>19</sup>

### **III. Proposed Changes**

#### *A. Rescind incident investigation, third-party audit, safer technology and alternatives analysis (STAA), and other prevention program amendments*

In this section, EPA discusses the proposed changes to the RMP Amendments rule, but explanations of the rationale for most changes are discussed later in Section IV. *Rationale for Rescissions and Modifications*. Because many of the changes are being proposed for the same reason, presenting the rationale separately eliminates redundant discussion and allows rationale discussion to be organized by topic (i.e. OSHA coordination, security risks, cost reduction).

In the RMP Amendments rule, EPA added three major provisions to the accident prevention program of Subparts C (for Program 2 processes) and D (for Program 3 processes). These included:

- 1) A requirement in § 68.60 and § 68.81 for all facilities with Program 2 or 3 processes to conduct a root cause analysis using a recognized method as part of an incident investigation of a catastrophic release or an incident that could have reasonably resulted in a catastrophic release (i.e., a near-miss).
- 2) Requirements in § 68.58 and § 68.79 for regulated facilities with Program 2 or Program 3 processes to contract with an independent third-party, or assemble an audit team led by an

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<sup>19</sup> Available at [https://www.osha.gov/chemicalexecutiveorder/psm\\_terminology.html](https://www.osha.gov/chemicalexecutiveorder/psm_terminology.html)

independent third-party, to perform a compliance audit after the facility has an RMP reportable accident or when an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the specified competency or independence criteria. Requirements were established in new § 68.59 and § 68.80 for third-party auditor competency, independence, and responsibilities and for third-party audit reports and audit findings response reports.

- 3) A requirement in § 68.67(c)(8) for facilities with Program 3 regulated processes in North American Industrial Classification System (NAICS) codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing) to conduct a safer technology and alternatives analysis (STAA) as part of their process hazard analysis (PHA). This required the owner or operator to address safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards; to consider, in the following order or preference, inherently safer technologies, passive measures, active measures and procedural measures while using any combination of risk management measures to achieve the desired risk reduction; and to evaluate the practicability of any inherently safer technologies and designs considered.
- 4) The RMP Amendments rule also made several other minor changes to the Subparts C and D prevention program requirements. These included the following:
  - § 68.48 Safety information – changed requirement in subparagraph (a)(1) to maintain Safety Data Sheets (SDS) in lieu of Material Safety Data Sheets.

- § 68.50 Hazard review – added language to existing subparagraph (a)(2) to require hazard reviews to include findings from incident investigations when identifying opportunities for equipment malfunctions or human errors that could cause an accidental release.
- §§ 68.54 and 68.71 Training – changed description of employee(s) “operating a process” to “involved in operating a process” in § 68.54 paragraphs (a) and (b), and changed “operators” to “employees involved in operating a process” in § 68.54 (d). EPA also added paragraph (e) in § 68.54 and paragraph (d) in § 68.71 to make employee training requirements also apply to supervisors responsible for directing process operations (under § 68.54) and supervisors with process operational responsibilities (under § 68.71).
- §§ 68.58 and 68.79 Compliance audits – changes to paragraph (a) for Program 2 and Program 3 provisions added language to clarify that the owner or operator must evaluate compliance with each covered process every three years.
- §§ 68.60 and 68.81 Incident investigation – made the following changes: revised paragraph (a) in both sections by adding clarifying text “(i.e., a near miss)” to describe an incident that could reasonably have resulted in a catastrophic release; revised paragraph (a) in both sections to require investigation when an incident resulting in catastrophic releases also results in the affected process being decommissioned or destroyed; added paragraph (c) to § 68.60 to require for Program 2 processes, incident investigation teams to be established and consist of at least one person knowledgeable in the process involved and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident; redesignated paragraphs (c) through (f) in § 68.60 as paragraphs (d) through (g); revised redesignated paragraph (d) in § 68.60 and paragraph (d) in § 68.81 to require an incident investigation report to be prepared and completed within 12

months of the incident, unless the implementing agency approves, in writing, an extension of time, and added paragraph (g) in § 68.60 to require investigation reports to be retained for five years; and in § 68.60 replaced the word “summary” in redesignated paragraph (d) with “report.” The following changes were made in both paragraph (d) of § 68.81 and redesignated paragraph (d) of § 68.60 to specify additional required contents of the investigation report: revised paragraph (d)(1) to include time and location of the incident; revised paragraph (d)(3) to require that description of incident be in chronological order, with all relevant facts provided; redesignated and revised paragraph (d)(4) into paragraph (d)(7) to require that the factors that contributed to the incident include the initiating event, direct and indirect contributing; added new paragraph (d)(4) to require the name and amount of the regulated substance involved in the release (e.g. fire, explosion, toxic gas loss of containment) or near miss and the duration of the event; added new paragraph (d)(5) to require the consequences, if any, of the incident including, but not limited to: injuries, fatalities, the number of people evacuated, the number of people sheltered in place, and the impact on the environment; added new paragraph (d)(6) to require the emergency response actions taken; and redesignated and revised paragraph (d)(5) of § 68.81 and paragraph (c)(5) of § 68.60 into paragraphs (d)(8) of both sections to require that the investigation recommendations have a schedule for being addressed.

- § 68.65 Process safety information – change to paragraph (a) required the owner or operator to keep process safety information up-to-date; change to Note to paragraph (b) revised the term “Material Safety Data Sheets” to “Safety Data Sheets (SDS).”

- § 68.67 Process hazard analysis – change to subparagraph (c)(2) added requirement for PHA to address the findings from all incident investigations required under § 68.81, as well as any other potential failure scenarios.
- § 68.3 Definitions - added definitions for terms *active measures, inherently safer technology or design, passive measures, practicability*, and *procedural measures* related to amendments to requirements in § 68.67. Added definition of *root cause* related to amendments to requirements in § 68.60 and § 68.81. Added definition for term *third-party audit* related to amendments to requirements in § 68.58 and added § 68.59.

EPA now proposes to rescind all of the above changes, with the exception of the two changes that would revise the term “Material Safety Data Sheets” to “Safety Data Sheets (SDS)” in §§ 68.48 and 68.65. This includes deleting the words “for each covered process” from the compliance audit provisions in § 68.58 and § 68.79, which apply to RMP Program 2 and Program 3, respectively. EPA proposes to rescind the requirements to report the following data elements in the risk management plan: in § 68.170 (i), whether the most recent compliance audit was a third-party audit, pursuant to §§ 68.58 and 68.59; in § 68.175 (k), whether the most recent compliance audit was a third-party audit, pursuant to §§ 68.79 and 68.80; and in § 68.175 (e)(7), inherently safer technology or design measures implemented since the last PHA, if any, and the technology category (substitution, minimization, simplification and/or moderation). In § 68.175(e), EPA proposes to rescind the Amendments rule’s deletion of the expected date of completion of any changes resulting from the PHA for program 3 facilities. Adding back this requirement would revert reporting of the PHA information in the risk management plan to what is currently required by the existing in-effect rule. This would also be consistent with the similar § 68.170 (e) requirement for Program 2 facilities to report the expected date of completion of any



changes resulting from the hazard review, a requirement that was not deleted in the Amendments rule. EPA also proposes to rescind the requirement in § 68.190 (c), that prior to de-registration, the owner or operator shall meet applicable reporting and incident investigation requirements in accordance with §§ 68.42, 68.60 and/or 68.81.

Alternatively, EPA proposes to rescind all of the above changes, except for the following:

- Requirement in § 68.50(a)(2) for the hazard review to include findings from incident investigations;
- Retain the term “report(s)” in place of the word “summary(ies)” in § 68.60;
- Requirement in § 68.60 for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident;
- Requirements in §§ 68.54 and 68.71 for training requirements to apply to supervisors responsible for process operations and minor wording changes involving the description of employees operating a process in § 68.54; and,
- Retain the two changes that would revise the term “Material Safety Data Sheets” to “Safety Data Sheets (SDS)” in §§ 68.48 and 68.65.

EPA requests public comment on the Agency’s proposal to rescind and modify the prevention requirements of the RMP Amendments rule, as well as the alternatives described above.

#### *B. Rescind information availability amendments*

In the RMP Amendments rule, EPA added several new provisions to § 68.210 – Availability of information to the public. These included:

- 1) a requirement for the owner or operator to provide, upon request by any member of the public, specified chemical hazard information for all regulated processes, as applicable, including:
  - Names of regulated substances held in a process,
  - SDSs for all regulated substances located at the facility,
  - Accident history information required to be reported under § 68.42,
  - Emergency response program information, including whether or not the source responds to releases of regulated substances, name and phone number of local emergency response organizations, and procedures for informing the public and local emergency response agencies about accidental releases,
  - A list of scheduled exercises required under § 68.96 (i.e., new emergency exercise provisions of the RMP Amendments rule), and;
  - Local Emergency Planning Committees (LEPC) contact information;
- 2) A requirement for the owner or operator to provide ongoing notification on a company website, social media platforms, or through other publicly accessible means that the above information is available to the public upon request, along with the information elements that may be requested and instructions for how to request the information, as well as information on where members of the public may access information on community preparedness, including shelter-in-place and evacuation procedures;
- 3) A requirement for the owner or operator to provide the requested chemical hazard information within 45 days of receiving a request from any member of the public, and;

- 4) A requirement to hold a public meeting to provide accident information required under § 68.42 as well as other relevant chemical hazard information, no later than 90 days after any accident subject to reporting under § 68.42.

Additionally, the RMP Amendments rule added provisions to § 68.210 to address classified information and confidential business information (CBI) claims for information required to be provided to the public, and made a minor change to the existing paragraph (a) RMP availability, to add a reference to 40 CFR part 1400 for controlling public access to RMPs.

EPA now proposes for security reasons to rescind the requirements for providing to the public upon request, chemical hazard information and access to community emergency preparedness information in § 68.210 (b) through (d), as well as rescind the requirement to provide the “other chemical hazard information such as that described in paragraph (b) of this section” at public meetings required under § 68.210 (e). Alternatively, EPA proposes to rescind all of the information elements in § 68.210(b) through (d), as well as rescind the requirement to provide the “other chemical hazard information such as that described in paragraph (b) of this section” at public meetings required under § 68.210 (e), except for the requirement in § 68.210(b)(5) for the owner or operator to provide a list of scheduled exercises required under § 68.96. EPA will retain the requirement in § 68.210 (e) for owner/operator of a stationary source to hold a public meeting to provide accident information required under § 68.42 no later than 90 days after any accident subject to reporting under § 68.42, but clarifying that the information to be provided is the data listed in § 68.42 (b). This data would be provided for only the most recent accident, and not for previous accidents covered by the 5-year accident history requirement of § 68.42(a). EPA will retain the change to paragraph (a) “RMP availability” which added availability under 40 CFR part 1400 (addresses restrictions on disclosing RMP offsite

consequence analysis under the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRRA).<sup>20</sup> The provisions for classified information in § 68.210 (f) will also be retained but are separately proposed to be incorporated into the emergency response coordination section of the rule. EPA proposes to delete the provision for CBI in § 68.210 (g), because the only remaining provision for public information availability in this section (other than the provision for RMP availability) is the requirement to provide at a public meeting, the information required in the source's five-year accident history, which § 68.151(b)(3) prohibits the owner or operator from claiming as CBI. EPA proposes to rescind the requirements in § 68.160 (b)(21) to report in the risk management plan, the method of communication and location of the notification that hazard information is available to the public, pursuant to § 68.210(c). EPA requests public comment on the Agency's proposal to rescind and modify the public information availability requirements of the RMP Amendments rule, as well as the alternatives described above.

### *C. Modify local coordination amendments*

In the RMP Amendments rule, EPA required owners or operators of "responding" and "non-responding" stationary sources to perform emergency response coordination activities required under new § 68.93. These activities included coordinating response needs at least annually with local emergency planning and response organizations, as well as documenting these coordination activities. The RMP Amendments rule required coordination to include providing to the local emergency planning and response organizations the stationary source's emergency response plan if one exists, emergency action plan, updated emergency contact information, and any other information that local emergency planning and response

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<sup>20</sup> EPA-HQ-OEM-2015-0725-0135.

organizations identify as relevant to local emergency response planning. For responding stationary sources, coordination must also include consulting with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b). Owners or operators of responding and non-responding sources are required to request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss these materials.

EPA now proposes to modify the local coordination amendments by deleting the phrase in § 68.93(b), "...and any other information that local emergency planning and response organizations identify as relevant to local emergency response planning." Alternatively, EPA proposes to change this phrase to read: "other information necessary for developing and implementing the local emergency response plan." Under both alternatives, EPA also proposes to incorporate appropriate classified information and CBI protections to regulated substance and stationary source information required to be provided under § 68.93.

EPA is retaining the requirement in § 68.95(a)(1)(i) for responding facilities to update their facility emergency response plans to include appropriate changes based on information obtained from coordination activities, emergency response exercises, incident investigations or other information. In addition, EPA will retain the requirement in § 68.95(4) that emergency response plan notification procedures must inform appropriate Federal and state emergency response agencies, as well as local agencies and the public.

EPA proposes to retain language in § 68.93(b) referring to field and tabletop exercise schedules and plans with a proposal to retain some form of field and tabletop exercise requirement. Alternatively, in conjunction with an alternative proposal to rescind field and

tabletop exercise requirements (see “Modify exercise amendments” below), the Agency also proposes to rescind this language.

EPA is proposing no other changes to the local coordination requirements of the RMP Amendments rule. Under either alternative proposed above, the following provisions would remain unchanged: the provisions of paragraph (b) requiring coordination to include providing to the local emergency planning and response organizations the stationary source’s emergency response plan if one exists, emergency action plan, and updated emergency contact information, as well as the requirement for the owner or operator to request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss these materials. For provisions of the RMP Amendments that we propose to retain, we continue to rely on the rationale and responses we provided when we promulgated the Amendments. See 81 FR 13671 – 74 (proposed RMP Amendments rule), March 14, 2016, 82 FR 4653 – 58 (final RMP Amendments rule), January 13, 2017. EPA requests public comment on the Agency’s proposal to modify the local coordination requirements of the RMP Amendments rule, as well as the alternatives described above.

#### *D. Modify exercise amendments*

In the RMP Amendments rule, EPA added a new section entitled § 68.96 Emergency response exercises. This section contained several new provisions, including:

- Notification exercises: At least once each calendar year, the owner or operator of a stationary source with any Program 2 or Program 3 process must conduct an exercise of the stationary source’s emergency response notification mechanisms.

- Owners or operators of responding stationary sources are allowed to perform the notification exercise as part of the tabletop and field exercises required in new § 68.96(b).
- The owner/operator must maintain a written record of each notification exercise conducted over the last five years.
- Emergency response exercise program: The owner or operator of a responding stationary source must develop and implement an exercise program for its emergency response program.
  - Exercises must involve facility emergency response personnel and, as appropriate, emergency response contractors.
  - The emergency response exercise program must include field and tabletop exercises involving the simulated accidental release of a regulated substance.
  - Under the RMP Amendments rule, the owner or operator is required to consult with local emergency response officials to establish an appropriate frequency for exercises, but at a minimum, the owner or operator must hold a tabletop exercise at least once every three years, and a field exercise at least once every ten years.
  - Field exercises must include tests of procedures to notify the public and the appropriate Federal, state, and local emergency response agencies about an accidental release; tests of procedures and measures for emergency response actions including evacuations and medical treatment; tests of communications systems; mobilization of facility emergency response personnel, including contractors, as appropriate; coordination with local emergency responders;

emergency response equipment deployment; and any other action identified in the emergency response program, as appropriate.

- Tabletop exercises must include discussions of procedures to notify the public and the appropriate Federal, state, and local emergency response agencies; procedures and measures for emergency response including evacuations and medical treatment; identification of facility emergency response personnel and/or contractors and their responsibilities; coordination with local emergency responders; procedures for emergency response equipment deployment; and any other action identified in the emergency response plan, as appropriate.
- For both field and tabletop exercises, the RMP Amendments rule requires the owner or operator to prepare an evaluation report within 90 days of each exercise. The report must include a description of the exercise scenario, names and organizations of each participant, an evaluation of the exercise results including lessons learned, recommendations for improvement or revisions to the emergency response exercise program and emergency response program, and a schedule to promptly address and resolve recommendations.
- The RMP Amendments rule also contains a provision for alternative means of meeting exercise requirements, which allows the owner or operator to satisfy the requirement to conduct notification, field and/or tabletop exercises through exercises conducted to meet other Federal, state or local exercise requirements, or by responding to an actual accidental release.

EPA is now proposing to modify the exercise program provisions of § 68.96(b), as requested by state and local response officials, by removing the minimum frequency requirement



for field exercises and establishing more flexible scope and documentation provisions for both field and tabletop exercises. Under this proposal, EPA would retain the final RMP Amendments rule requirement for the owner or operator to attempt to consult with local response officials to establish appropriate frequencies and plans for field and tabletop exercises. The minimum frequency for tabletop exercises would remain at three years. However, there would be no minimum frequency specified for field exercises in order to reduce burden on regulated facilities and local responders as explained in rationale section IV. D. 5. Costs of Field and Tabletop Exercises. Documentation of both types of exercises would still be required, but the items specified for inclusion in exercises and exercise evaluation reports under the RMP Amendments rule would be recommended, and not required. The content of exercise evaluation reports would be left to the reasonable judgement of stationary source owners or operators and local emergency response officials. As described in the RMP Amendments rule, if local emergency response officials declined the owner or operator's request for consultation on and/or participation in exercises, the owner or operator would be allowed to unilaterally establish appropriate frequencies and plans for the exercises (provided that the frequency for tabletop exercises does not exceed three years), and conduct exercises without the participation of local emergency response officials. Likewise, if local emergency response officials and the facility owner or operator cannot agree on the appropriate frequency and plan for an exercise, owners and operators must still ensure that exercises occur and should establish plans to execute the exercises on their own. The RMP Amendments rule does not require local responders to participate in any of these activities, nor would this proposal.

This proposal would not alter the notification exercise requirement of § 68.96(a) or the provision for alternative means of meeting exercise requirements of § 68.96(c). EPA proposes to

correct an error in § 68.96(b)(2)(i) related to the frequency of tabletop exercises by proposing to replace the phrase “shall conduct a field exercise every three years” with “shall conduct a tabletop exercise every three years.” For provisions of the RMP Amendments that we propose to retain, we continue to rely on the rationale and responses we provided when we promulgated the Amendments. See 81 FR 13674 – 76 (proposed RMP Amendments rule), March 16, 2016 and 82 FR 4659 - 67 (final RMP Amendments rule), January 13, 2017. In summary, EPA found that exercising an emergency response plan is critical to ensure that response personnel understand their roles, that local emergency responders are familiar with the hazards at the facility, and that the emergency response plan is appropriate and up-to-date. Exercises also ensure that personnel are properly trained and lessons learned from exercises can be used to identify future training needs. Poor emergency response procedures during some recent accidents have highlighted the need for facilities to conduct periodic emergency response exercises. Other EPA and federal agency programs and some state and local regulations require emergency response exercises.

Alternatively, EPA is considering whether to fully rescind the field and tabletop exercise provisions of § 68.96(b). Under this alternative proposal, EPA would retain the notification exercise provision of § 68.96(a), but revise it and § 68.93(b) to remove any reference to tabletop and field exercises, while also modifying the provision in § 68.96(c) for alternative means of meeting exercise requirements so that it applies only to notification exercises.

EPA is also considering another alternative – to remove the minimum frequency requirement for field exercises, but retain all remaining provisions of the RMP Amendments rule regarding field and tabletop exercises, including the RMP Amendments rule requirements for exercise scope and documentation.

EPA requests public comment on the Agency's proposal to modify the exercise requirements of the RMP Amendments rule, as well as the alternatives described above.

*E. Revise emergency response contacts provided in RMP*

EPA proposes to modify the emergency response contact information required to be provided in a facility's RMP. In § 68.180(a)(1) of the Amendments rule, EPA required the owner or operator to provide the name, organizational affiliation, phone number, and email address of local emergency planning and response organizations with which the stationary source last coordinated emergency response efforts. EPA now proposes to modify this requirement to read: "Name, phone number, and email address of local emergency planning and response organizations...."

*F. Revise compliance dates*

In the RMP Amendments rule, EPA required compliance with the new provisions as follows:

- Required compliance with emergency response coordination activities by March 14, 2018;
- Required compliance with the emergency response program requirements of § 68.95 within three years of when the owner or operator initially determines that the stationary source is subject to those requirements;
- Required compliance with other major provisions (i.e., third-party compliance audits, root cause analyses and other added requirements to incident investigations, STAA, emergency response exercises, and information availability provisions), unless otherwise stated, by March 15, 2021; and;

- Required the owner or operator to correct or resubmit their RMP to reflect new and revised data elements promulgated in the RMP Amendments rule by March 14, 2022.

EPA did not specify compliance dates for the other minor changes to the Subpart C and D prevention program requirements. Therefore, under the RMP Amendments rule, compliance with these provisions was required on the effective date of the RMP Amendments rule. EPA now proposes to extend compliance dates as follows:

- For emergency response coordination activities, EPA proposes to require compliance by one year after the effective date of a final rule.
- For emergency response exercises, EPA proposes to require owners and operators to have exercise plans and schedules meeting the requirements of § 68.96 in place by four years after the effective date of a final rule. EPA also proposes to require owners and operators to have completed their first notification drill by five years after the effective date of a final rule, and to have completed their first tabletop exercise by 7 years after the effective date of a final rule. Under this proposal, there would be no specific compliance date specified for field exercises, because field exercises would be conducted according to a schedule developed by the owner or operator in consultation with local emergency responders.
- For corrections or resubmissions of RMPs to reflect reporting on new and revised data elements (public meeting information and emergency response program and exercises), EPA proposes to require compliance by five years after the effective date of a final rule.
- For third-party audits, STAA, root cause analyses and other new provisions of the RMP Amendments rule for incident investigations and chemical hazard information availability and notice of availability of information, as well as other minor changes to

the Subpart C and D prevention program requirements (except for the two changes that would revise the term “Material Safety Data Sheets” to “Safety Data Sheets (SDS)” in §§ 68.48 and 68.65), EPA is proposing to rescind these provisions. However, if a final rule does not rescind these provisions, EPA proposes to require compliance with any of these provisions that are not rescinded, by four years after the effective date of a final rule.

- For the public meeting requirement in § 68.210(b), EPA proposes to require compliance by two years after the effective date of a final rule.
- EPA is retaining the requirement to comply with the emergency response program requirements of § 68.95 within three years of when the owner or operator initially determines that the stationary source is subject to those requirements.

For provisions of the RMP Amendments that we propose to retain, we continue to rely on the rationale and responses we provided when we promulgated the Amendments. See 81 FR 13686 – 91 (proposed RMP Amendments rule), March 14, 2016 and 82 FR 4675 – 80 (final RMP Amendments rule), January 13, 2017. In summary, EPA found that one year was sufficient to arrange and document coordination activities, three years was needed to comply with emergency response program requirements, four years was necessary to comply with exercise provisions, and five years was necessary to update risk management plans.

Three years to develop an emergency response program is necessary for facility owners and operators to understand the requirements, arrange for emergency response resources and train personnel to respond to an accidental release. Compliance with emergency coordination requirements could require up to one year because some facilities who have not been regularly coordinating will need time to get familiar with the new requirements, while having some flexibility in scheduling and preparing for coordination meetings with local emergency response

organizations whose resources and time for coordination may be limited. A shorter timeframe may be difficult to comply with, especially for RMP sources whose local emergency organization has many RMP sources in their jurisdiction who are trying to schedule coordination meetings with local responders at the same time.

For the emergency exercises, EPA is proposing a four year compliance time for developing exercise plans and schedules, an additional year for conducting the first notification exercise, and an additional three years for conducting the first tabletop exercise, because EPA believes that additional time is necessary for sources to understand the new requirements for notification, field and tabletop exercises, train facility personnel on how to plan and conduct these exercises, coordinate with local responders to plan and schedule exercises, and carry out the exercises. Additional time will also provide owners and operators with flexibility to plan, schedule, and conduct exercises in a manner which is least burdensome for facilities and local response agencies. Also, EPA plans to publish guidance for emergency response exercises and once these materials are complete, owners and operators will need time to familiarize themselves with the materials and use them to plan and develop their exercises. If local emergency response organizations are to be able to participate in the field and tabletop exercises, sufficient time is needed to accommodate any time or resource limitations local responders might have not only for participating in exercises, but for helping to plan them.

For the public meeting requirement in § 68.210(b), EPA proposes to require compliance by two years after the effective date of a final rule. The RMP Amendments rule allows four years for compliance for the public meeting which was consistent with the compliance date for other information to be required to the public by § 68.210. However, EPA is proposing to remove the requirement to provide to the public the chemical hazard information in § 68.210 (b), the notice

of availability of information in § 68.210(c) and the timeframe for providing information 68.210(d) as well proposing to remove the requirement to provide the chemical hazard information in § 68.210 (b) at the public meeting. The stationary source would be required to provide the chemical accident data elements specified in § 68.42, data which should already be familiar to the source because this information is currently required to be reported in their risk management plan. Thus, two years should be enough time for facilities to be prepared to provide the required information at a public meeting after an RMP reportable accident. EPA seeks comment on whether a sooner compliance date is more appropriate.

With regard to the five-year compliance date for updating RMPs with newly-required information, EPA is proposing this time frame because EPA will need time to revise its RMP submission guidance for any provisions finalized and also to revise its risk management plan submission system, RMP\*eSubmit, to include additional data elements. Sources will not be able to update risk management plans until the revised RMP\*eSubmit system is ready. Also, once the software is ready, some additional time is needed to allow sources to update their risk management plans while preventing potential problems with thousands of sources submitting updated risk management plans on the same day.

#### *G. Corrections to cross referenced CFR sections*

EPA proposes to correct CFR section numbers that are cross referenced in certain sections of the rule because these were changes necessitated by addition and redesignation of paragraphs pertaining to provisions in the Amendments rule but were overlooked at the time. Table 4 contains a list of these corrections.

TABLE 4 – CORRECTIONS TO CROSS REFERENCED SECTION NUMBERS

<b>In Section:</b>	<b>Change in section reference:</b>
68.12(b)	68.10(b) should be 68.10(g)
68.12(c)	68.10(c) should be 68.10(h)
68.12(d)	68.10(d) should be 68.10(i)
68.12(b)(4)	68.10(b)(1) should be 68.10(g)(1)
68.96(a)	68.90(a)(2) should be 68.90(b)(3)
68.180(a)(1)	68.10(f)(3) should be 68.10(g)(3)
68.215(a)(2)(i)	68.10(a) should be 69.10(a) through (f)

#### **IV. Rationale for Rescissions and Modifications**

##### *A. Maintain consistency in accident prevention requirements*

In both the RMP Coalition Petition and the CSAG Petition, the petitioners seek reconsideration of the RMP Amendments based on what they view as either EPA’s failure to coordinate with OSHA and DOT as required by paragraph (D) of CAA section 112(r)(7) or at least inadequate coordination. For example, CSAG’s petition comments: <sup>21</sup>

Stakeholders have repeatedly asked EPA why it is pursuing this effort in isolation when Congress directed it to coordinate any requirements under Clean Air Act Section 112(r) with certain industry standards, and with those issued for comparable purposes by OSHA and U.S. Department of Transportation (DOT). This directive to coordinate was repeated in E.O. 13650 (footnotes omitted).

The RMP Coalition notes that OSHA had been reexamining the PSM standard under E.O. 13650 but “ha[d] yet to complete the PSM standard rulemaking process and the timeframe for that regulation is unclear.”<sup>22</sup>

##### **1. What was EPA’s approach to coordination with other agencies prior to E.O. 13650?**

<sup>21</sup> CSAG Petition, pg. 25, document ID: EPA-HQ-OEM-2015-0725-0766.

<sup>22</sup> RMP Coalition Petition, pg. 19, Document ID: EPA-HQ-OEM-2015-0725-0759.



Both EPA's 40 CFR part 68 RMP regulation and OSHA's 29 CFR 1910.119 PSM standard were authorized under the Clean Air Act Amendments of 1990. Both the OSHA PSM standard and the EPA RMP rule aim to prevent or minimize the consequences of accidental chemical releases and protect workers, the community and the environment through implementation of management program elements that integrate technologies, procedures and management practices. EPA's RMP regulation has a large overlap with the PSM standard and both were written to complement each other in accomplishing these Congressional goals.

The 1996 Risk Management Program rule and the related notice and supplemental notice of proposed rulemaking (60 FR 13526, March 13, 1995) not only mention and reflect consultations with both DOT and DOL-OSHA, but also show close coordination between the PSM standard and the EPA program. In the proposed Risk Management Program rule, EPA proposed that all sources subject to EPA's rules comply with a prevention program based on the PSM standard. See 58 FR 54190, 54195-96 (October 20, 1993). The preamble to the proposed rulemaking contained an explanation of the differences between PSM standard and the Risk Management Program and a section-by-section comparison. *Id.* at 54203-05. In EPA's view, "[e]xcept for the management system requirement . . . , the proposed EPA prevention program covers the same elements as OSHA's [PSM standard] and generally uses identical language except where the statutory mandates of the two agencies dictate differences." *Id.* at 54204. EPA retained a PSM standard-based prevention program (tier) in its supplemental proposal. See 60 FR 13526, March 13, 1995 at 13529. In the 1996 final rule, EPA placed all PSM standard-covered processes that were subject to EPA's Risk Management Program in program 3 for prevention (unless the process was eligible for Program 1), and adopted language in program 3 that even more closely tracked PSM than had the proposal. See 61 FR 31668, June 20, 1996 at 31672-3,

31677, 31686-8, 31692-3, 31696-7, 31708 and 31711-12. Those differences in provisions between program 3 and the PSM standard that did exist were driven by statutory terms. See 61 FR 31668, June 20, 1996 at 31672, 31687, and 31696.

Measures taken by sources to comply with the OSHA PSM standard for any process that meets OSHA's PSM standard are sufficient to comply with the prevention program requirements of all three Programs.<sup>23</sup> The Program 3 prevention program finalized in 1996 includes requirements of the OSHA PSM standard 29 CFR 1910.119 (c) through (m) and (o), with minor wording changes to address statutory differences. This makes it clear that one accident prevention program to protect workers, the general public, and the environment will satisfy both OSHA and EPA.<sup>24</sup> These prevention program requirements in Program 3 cover employee participation, process safety information, process hazard analysis, operating procedures, training, contractors, pre-startup safety review, mechanical integrity, hot work permits, management of change, incident investigation, and compliance audits.

Other provisions of the 1996 rule as well as subsequent amendments to the Risk Management Program reflect coordination with DOT. EPA has relied on DOT definitions for key terms and allowed compliance with the hazardous material regulations to satisfy requirements of EPA's program. See 61 FR 31668, June 20, 1996 at 31700, 63 FR 640, January 6, 1998, and 64 FR 28696, May 26, 1999 at 28698. The coordination with other agencies in the Risk Management Program helped to minimize burden and avoided requiring unduly duplicative and distinct compliance programs addressing the same matters. In short, whenever possible, compliance with one agency's program was compliance with all.

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<sup>23</sup> 61 FR 31671, June 20, 1996. EPA final rule for Accidental Release Prevention Requirements: Risk Management Programs under the CAA, Section 112(r)(7).

<sup>24</sup> 61 FR 31672, June 20, 1996.

2. What was EPA's approach to coordination under E.O. 13650 during the development of the RMP Amendments?

EPA adopted a somewhat inconsistent approach to the consultation and coordination requirement in developing the Risk Management Program Amendments of 2017. After the West Fertilizer fire and explosion on April 17, 2013, EPA and OSHA, (along with DHS) as members of the Chemical Facility Safety and Security Working Groups established by Executive Order 13650, continued to consult with each other on their overlapping programs as they considered changes to existing chemical safety and security regulations. EPA and OSHA discussed options for changes to the RMP regulations and the OSHA PSM standard, respectively, in the May 2014 document entitled "Executive Order 13650 Report to the President - Actions to Improve Chemical Facility Safety and Security - A Shared Commitment."<sup>25</sup> In justifying its pre-regulatory "Request for Information" notice that raised for discussion potential amendments to the risk management program, EPA noted that E.O. 13650 had directed OSHA to publish an RFI on potentially amending the PSM standard, cited the coordination requirement of CAA section 112(r)(7)(D), and found that "[t]his RFI will allow EPA to evaluate any potential updates to the RMP regulation *in parallel to OSHA's evaluation of potential updates* to the PSM standard." 79 FR 44604, July 31, 2014 at 44605 (emphasis added). Nevertheless, when EPA proceeded to rulemaking, we pushed forward with finalizing amendments to the Risk Management Program before OSHA had evaluated all of the information before it and before EPA had an understanding of OSHA's future actions. In other words, when EPA proceeded with its rulemaking, we no longer emphasized proceeding *in parallel*.

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<sup>25</sup> Chemical Facility Safety and Security Working Group. May 2014. E. O. 13650 Report to the President - Actions to Improve Chemical Facility Safety and Security - A Shared Commitment. EPA, Department of Labor, Department of Homeland Security, Department of Justice, Department of Agriculture and Department of Transportation (DOT). Washington, DC, EPA-HQ-OEM-2015-0725-0246.

Several commenters were critical about EPA’s approach to coordination with OSHA and other agencies during the development of the RMP Amendments. Many advanced theories of OSHA “primacy” in the area of process safety and that EPA had impermissibly regulated workplace safety in violation of the statute. See Amendments RTC at 15 -16<sup>26</sup>, see also *id.* for EPA’s responses. Others claimed EPA failed to coordinate with OSHA and should cease its rulemaking until it did so. See Amendments RTC at 249 – 51. Generally, EPA responded by providing information on meetings and other interactions with OSHA during the rule development. *Id.*; see 82 FR 4594, January 13, 2017 at 4601. However, some commenters made the more specific criticism that EPA should have deferred proceeding with the RMP Amendments until OSHA had a parallel proposed rule amending the PSM standard available. Amendments RTC at 249-50. In response, EPA noted that each agency had distinct rulemaking procedures and that the 1990 CAA Amendments allowed for and contemplated each agency to proceed with rulemaking on different schedules. *Id.* at 251. Furthermore, EPA noted that OSHA had completed an advisory small business panel proceeding on its potential PSM standard amendments, and we expressed the belief that the two agencies did not need to proceed on identical timelines. *Id.* at 232. Our responses were generally focused on the legal permissibility of proceeding on separate schedules rather than the policy wisdom of doing so.

3. What is EPA’s proposed approach to “coordination” in this reconsideration?

Under Clean Air Act section 112(r)(7)(D), although Congress has conveyed to EPA discretion regarding how it should coordinate with OSHA, Congress’s intent is clear that EPA coordinate its program with the other agencies’ where possible. Accordingly, although at times

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<sup>26</sup> EPA-HQ-OEM-2015-0725-0729 in the docket.

divergence between the RMP rule and the PSM standard may make sense given the agencies' different missions, both agencies generally have tried to minimize confusion and burden on the regulated community by minimizing divergence. The RMP Amendments constitute a divergence from that longstanding practice: although EPA has regularly communicated and coordinated with OSHA on its prevention program and process safety efforts so far, EPA proceeded to promulgate the RMP Amendments before understanding OSHA's path forward in this area and before understanding whether any divergence is reasonable for EPA.

After further consideration, EPA believes it did not give sufficient weight to the value of coordination with OSHA and focused too much on its legal authority to proceed independently. EPA now proposes to determine that a more sensible approach would be to have a better understanding of what OSHA will be doing in this area before revising the RMP accident prevention program. Thus, EPA proposes to rescind the RMP accident prevention amendments pending further action by OSHA. This approach would allow the two programs' process safety requirements to remain aligned as much as possible so that the regulated community may have a better understanding of what to do to comply while reducing unnecessary complexity and cost. Having consistency between required safe practices and common understanding of requirements should help industry to comply with the PSM standard and RMP rule and improve the effectiveness of accident prevention efforts.

This approach would better fulfill the Congressional purpose of coordination between the two agencies while maximizing consistency and ease of implementation of regulatory requirements. It is also responsive to concerns from stakeholders about our approach to coordination under the Amendments rule. We intend to allow for a better understanding of OSHA's plan for changes to the PSM standard before proposing any future changes to our rule.

While EPA has amended the Risk Management Program several times after 1996 without corresponding OSHA amendments to its PSM standard, these changes did not involve the prevention program provisions, thus precluding any need for coordination with OSHA. The Risk Management Program Amendments of 2017 were the first time we had issued post-1996 amendments that were significant due to costs and deemed major for purposes of the Congressional Review Act. Under these circumstances, we think that our approach to the 1996 RMP rule, where we attempted to either maintain consistent language with the PSM standard or carefully justify our departure, is a better approach. Our record shows the 2017 Amendments have significant costs and are discretionary. Given the flexibility in CAA section 112(r)(7), EPA may thus make a policy choice to conduct EPA's rulemaking proceedings to improve the RMP program after we have a better understanding of OSHA's timing of comment opportunities, content of amendments, and implementation schedules. EPA proposes to place greater weight than it did in promulgating the Amendments on the policy importance of coordinating with OSHA and not adopting significant changes to the risk prevention aspects of the RMP rule that diverge from OSHA's requirements until we have a better understanding of OSHA's path forward.

The reasonableness of this approach to coordination can be seen in both EPA's and OSHA's experiences conducting outreach to small entities as both agencies prepared to develop amendments to the RMP rule and the PSM standard. For EPA, we must "take into consideration the concerns of small business in promulgating regulations under [CAA section 112(r)]." CAA section 112(r)(7)(C). During the fall/winter of 2015, EPA convened an Small Business Advocacy Review (SBAR) panel to obtain advice and recommendations from Small Entity Representatives (SERs) that were potentially subject to the proposed RMP amendments. The

SBAR panel report on the proposed RMP amendments under consideration contains the small entity comments and recommendations to the EPA Administrator from the three panel members (EPA, Small Business Administration Office of Advocacy, and the OMB Office of Information and Regulatory Affairs).<sup>27</sup> EPA published its proposed rulemaking on the RMP amendments on March 14, 2016 (81 FR 13638).

During the summer of 2016, OSHA initiated a Small Business Advocacy Review Panel in order to get feedback on several potential revisions to OSHA's Process Safety Management Program (PSM) standard. Some potential revisions tracked EPA's RMP Amendments, which were in the proposed rule stage, while others were not included in the Amendments. OSHA also considered a number of minor modifications which largely codify existing OSHA interpretations of the PSM standard. OSHA completed their SBAR Panel Final Report in August 2016.<sup>28</sup>

OSHA may or may not adopt amendments discussed in the SBAR Panel Report. EPA believes it would be prudent to understand OSHA's path forward in this area before owners and operators are required to implement changes under the RMP rule in order to decide whether any divergence from OSHA's PSM standard is reasonable for EPA. One example of potential divergence between the OSHA PSM standard and the RMP rule would be in the requirement for third-party audits. The August 2016 OSHA SBAR panel report did not fully support third-party audits. Instead the SBAR panel recommended further review of the need and benefits of third-party audits; the sufficient availability, adequate process knowledge and degree of independence

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<sup>27</sup> EPA/OMB/SBA. February 19, 2016. Small Business Advocacy Review Panel Report on EPA's Planned Proposed Rule: Risk Management Modernization Rule. Letter to EPA Administrator with Executive Summary (EPA-HQ-OEM-2015-0725-0030), Final Report (EPA-HQ-OEM-2015-0725-0032), and Appendix B Written Comments Submitted by SERs (EPA-HQ-OEM-2015-0725-0031).

<sup>28</sup> OSHA. August 1, 2016. Process Safety Management (PSM) SBREFA Panel Final Report. OSHA-2013-0020-0116.

needed of third-party auditors; and whether facilities should decide the best type of audit appropriate for their process.

EPA believes that we should not retain and put into effect changes to the prevention aspects of the Risk Management Program until we have a better understanding of OSHA's plans for the PSM standard changes so that we may move forward in a more coordinated fashion with regulatory changes that improve process safety performance and reduce accidents without causing undue burden and regulatory conflicts. Therefore, EPA is proposing to rescind the prevention requirements of the RMP Amendments rule applicable to both Program 2 and Program 3 processes in order to better understand OSHA's path forward for similar issues our sister agency is still evaluating. We propose to rescind the RMP Amendment provisions for incident investigation, third-party compliance audits, STAA, and various minor changes impacting subpart C and D of the RMP rule. Although the pre-amendment RMP Program 3 requirements were consistent with OSHA PSM standard, the RMP Program 2 regulations were slightly different by design, as explained earlier, providing less rigorous requirements and recordkeeping for Program 2 facilities. In contrast to Program 3 processes, small businesses make up a greater percentage of the processes subject to Program 2. Therefore, EPA also proposes to rescind any changes made to Program 2 prevention program elements to keep the Program 2 requirements less burdensome than those of Program 3, maintaining the pre-amendment RMP requirements for Program 2 facilities and the pre-amendment balance of burdens on smaller entities. EPA also proposes to rescind the words "for each covered process" from the compliance audit provisions in §§ 68.58 and 68.79, which apply to RMP Program 2 and Program 3, respectively, in order to prevent unnecessary divergence from language in compliance audits in the OSHA PSM standard.



As an alternative to rescinding the Amendments rule changes to the Program 2 and Program 3 prevention program provisions as proposed above, EPA is considering rescinding all of the above changes except for the requirement in § 68.50(a)(2) for the hazard review to include findings from incident investigations, the term “report(s)” in place of the word “summary(ies)” in § 68.60, the requirement in § 68.60 for Program 2 processes to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident, the requirements in §§ 68.54 and 68.71 for training requirements to apply to supervisors responsible for process operations and minor wording changes involving the description of employees operating a process in § 68.54, and the two changes that would revise the term “Material Safety Data Sheets” to “Safety Data Sheets (SDS)” in §§ 68.48 and 68.65.

The reason that EPA is considering this alternative is that these changes would not affect the consistency of the Program 3 prevention program requirements with the OSHA PSM standard. With the exception of the amendment to the training requirements (and the SDS provisions, which are minor terminology changes), these provisions would affect only the Program 2 prevention requirements. Also, retaining these changes would not make these Program 2 provisions more rigorous than their Program 3 counterparts, thus maintaining the rule’s current model where Program 2 requirements are generally more streamlined than the comparable Program 3 requirements. Regarding the change to the Program 3 training requirement, as EPA noted in the proposed Amendments rule, EPA has traditionally interpreted the training provisions of §§ 68.54 and 68.71 to apply to any worker that is involved in operating a process, including supervisors. This is consistent with the OSHA definition of employee set forth at 29 CFR 1910.2(d) (see 81 FR 13686, Monday, March 14, 2016). Therefore, retaining

this change may make the RMP Program 3 training provision even more consistent with the comparable provision of the PSM standard.

EPA requests comments on its proposal to rescind the changes made in the Program 2 and Program 3 prevention program provisions of the final RMP Amendments rule, including the alternative described above. Should investigation of Program 2 processes be required to have a team (of at least two people) with expertise in the process and investigation methods in order to thoroughly investigate and analyze the causes of incidents, even if the requirement to specifically conduct a root causes analysis is rescinded? Should Program 2 process investigations at least require investigation be performed by someone with expertise in the process?

*B. Address security concerns*

1. Emergency response coordination

EPA discussed the need for enhanced RMP local coordination provisions in the proposed Amendments rule. See 81 FR 13671, March 14, 2016. In summary, although there is substantial overlap between EPCRA requirements and RMP local coordination requirements, EPA found that some facilities who had indicated they do not have an RMP emergency response plan had not properly coordinated response actions with local authorities. State and local officials echoed these same concerns. In the final rule, EPA finalized enhanced local coordination provisions to address these concerns, while clarifying source's obligations for coordination, including specific information that must be communicated to local responders during annual coordination activities. In addition, EPA finalized the requirements to conduct field and tabletop exercises and stipulations for scope, frequency and documentation of exercises. Facilities must consult with local emergency response officials to establish appropriate schedules and plans for these exercises. EPA proposes to retain these requirements while addressing security concerns raised

by petitioners. In all three petitions requesting reconsideration of the RMP Amendments rule, petitioners objected to the rule language in § 68.93(b) requiring local emergency response coordination to include providing to the local emergency planning and response organizations “...any other information that local emergency planning and response organizations identify as relevant to local emergency response planning.” All Petitioners noted that the language was new to the final rule (i.e., it was not contained in the Amendments as proposed), broad, and posed potential security concerns. Petitioner CSAG identified a particular problem with the new disclosure provision: by relocating the disclosure provision from section § 68.205 in the proposal to section § 68.93, EPA had moved it to a section of the RMP rule that did not have specific procedures for handling CBI claims, and, CSAG argued, the protection in the RMP rule for classified information in section 68.210(f) did not clearly apply to disclosures under section 68.93(b).

Petitioners have correctly noted that EPA incorporated the language at issue in order to address concerns, including security concerns, raised by various commenters over EPA’s proposed RMP Amendments rule (81 FR 13638, March 14, 2016), which among other things proposed to add new § 68.205 to require owners and operators of all RMP-regulated facilities to provide certain information to Local Emergency Planning Committees (LEPCs) or local emergency response officials upon request. In response to these concerns, EPA, without acknowledging any inconsistency with the Chemical Facility Anti-Terrorism Standard or other regulatory structure, did not finalize § 68.205 of the proposed rulemaking in the final Amendments rule. Instead we required that the owner or operator to provide “any other information that local emergency planning and response organizations identify as relevant to local emergency planning” in § 68.93. Any claims for Chemical-terrorism Vulnerability

Information (CVI) could then be handled on a case-by-case basis by the stationary source, the LEPC, DHS and others, as appropriate.

In effect, petitioners are saying not only that EPA's final rule solution to the security concerns created by proposed § 68.205 did not fix the problem – it actually made it worse. After further review, EPA acknowledges that the petitioners' concerns have merit. Section 68.205 from the proposed RMP Amendments rule listed specific items of information that the owner or operator must provide to the LEPC or local emergency response officials upon request, but it did not include an open-ended provision for “any other information that local emergency planning and response organizations identify as relevant to local emergency response planning.” By including such a provision in the final RMP Amendments rule, EPA may have inadvertently opened the door to local emergency officials requesting and receiving security-sensitive information even beyond the specific items included in § 68.205 of the proposed RMP Amendments about which petitioners and others had raised concerns.

Petitioners have also correctly noted that by locating the final rule's local responder information availability provision in § 68.93, EPA removed any protections for CBI. Items requested under the proposed amendment to § 68.205 (but not included in final Amendments rule) would have benefited from the inclusion in that section of paragraphs (d) *Classified information*, and (e) *CBI*, but these paragraphs do not appear in § 68.93 of the final rule. EPA did not intend to eliminate CBI protection – it was an inadvertent consequence of relocating the local responder information availability provision to § 68.93.

EPA disagrees with the Petitioners' assertion that the protection for classified information in § 68.210(f) would not apply to all provisions of the RMP rule, including disclosures under § 68.93(b). This provision, which is simply a recodification of former § 68.210(b), has always

applied to all provisions under the RMP rule since it was adopted in 1996. Nevertheless, EPA proposes removal of the new broad information disclosure provision in § 68.93(b) as proposed to avoid any unnecessary disputes between LEPCs and holders of classified information over the scope of § 68.210(f) (to be redesignated § 68.210(b)).

EPA's proposed deletion of the phrase in § 68.93(b), "... any other information that local emergency planning and response organizations identify as relevant to local emergency response planning" would solve the problem with the open-ended disclosure provision. This is EPA's preferred option, as the Agency believes that the remaining language in § 68.93 will still ensure that local responders obtain the information they need while avoiding potential security concerns associated with the deleted provision. Even with this change, § 68.93 still requires the owner and operator to provide local responders with the names and quantities of regulated substances at the stationary source, the risks presented by covered processes, and the resources and capabilities at the stationary source to respond to an accidental release of a regulated substance, as well as the stationary source's emergency response plan if one exists; emergency action plan; and updated emergency contact information. Responding stationary sources would still be required to consult with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b), and all stationary source owners or operators would still be required to request an opportunity to meet with the LEPC (or equivalent) and/or local fire department as appropriate to review and discuss the information.

EPA's alternative proposal – to replace the phrase "... any other information that local emergency planning and response organizations identify as relevant to local emergency response planning" with the phrase, "other information necessary for developing and implementing the local emergency response plan," opts to use language virtually identical to that used in

Emergency Planning and Community Right-to-Know Act (EPCRA) section 303(d)(3), [42 U.S.C.11003(d)(3)]. That provision of EPCRA states: “Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.” This language also appears in § 68.95(c) of the version of the RMP rule currently in effect, which applies to facilities with Program 2 and Program 3 processes whose employees respond to accidental releases of regulated substances. Therefore, as a result of either the EPCRA section 303(d)(3) provision or the provision in § 68.95(c), most RMP facilities have long been subject to this requirement, and applying it to the relatively few RMP facilities that are not already subject to it under EPCRA section 303(d)(3) or § 68.95(c) should not create any security vulnerabilities.

Under both alternatives, EPA’s proposal to incorporate CBI and classified information protections to regulated substance and stationary source information provided under § 68.93 is intended to address petitioners’ concerns regarding these issues. Incorporating a CBI provision in this section of the rule will emphasize the facility owner or operator’s right to protect CBI. EPA notes that the RMP rule already authorizes the owner or operator of an RMP-regulated facility to assert CBI claims for information submitted in the RMP required under subpart G that meets the requirements of 40 CFR 2.301, with some limitations (e.g. five-year accident history information and emergency response program information required to be reported in source’s RMP cannot be claimed as CBI). EPA’s proposal would relocate the CBI provision of § 68.210(g) of the final RMP Amendments rule to § 68.93, which would allow CBI claims for emergency response coordination information in the same manner as required in §§ 68.151 and 68.152 for information contained in the RMP. EPA’s proposal would also replicate the classified information provisions of § 68.210(f) of the final RMP Amendments rule in § 68.93, which

would require that the disclosure of emergency response coordination information classified by the Department of Defense or other Federal agencies or contractors of such agencies be controlled by applicable laws, regulations, or executive orders concerning the release of classified information.<sup>29</sup> While the provision in § 68.210 (to be restored to § 68.210(b)) protects classified information for all information disclosure under the RMP rule, we believe replicating this language in § 68.93 will avoid unnecessary disputes between LEPCs and holders of classified information.

EPA requests public comments on its proposed changes to the emergency response coordination activities section of the RMP Amendments final rule. Does deleting the phrase in § 68.93(b) “...any other information that local emergency planning and response organizations identify as relevant to local emergency response planning” resolve petitioners’ security concerns without denying important emergency planning information to local emergency responders?

Would EPA’s alternate proposal, which replaces this language with, “other information necessary for developing and implementing the local emergency response plan” better resolve the issue by limiting additional information to that necessary for developing the local response plan?

If stakeholders believe the alternative language also presents new security concerns, how is it that this language has not caused such concerns in relation to its presence in EPCRA section 303(d)(3) or in § 68.95(c) of the currently in-effect RMP rule? Does EPA’s proposal to incorporate the classified information provision of § 68.210(f) into § 68.93 limit the potential for disputes between holders of classified information and LEPCs over the scope of the general protection against disclosure of classified information in section 68.210? Does EPA’s proposal to

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<sup>29</sup> The classified information provisions of § 68.210(f) would also remain within § 68.210, but be renumbered to § 68.210(b), which is where they appear within the currently-in-effect rule.

incorporate the CBI provisions of § 68.210(g) into § 68.93 appropriately address petitioners' concerns that these issues were not addressed in the emergency response coordination provisions of the final RMP Amendments rule?

## 2. Information Availability

Notwithstanding EPA efforts to address security concerns raised in public comments on the RMP Amendments, petitioners remain concerned about the potential for the information made available under § 68.210 of the RMP Amendments rule to be used by criminals or terrorists to target facilities for attack. Petitioner CSAG stated, "By providing unfettered access to information by local response organizations without safeguards, and by requiring disclosure of extensive facility information to the public upon request, EPA has done nothing to protect sensitive facility information."<sup>30</sup>

The States Petition enumerates the States' specific concerns with public information availability provisions, including that there is no screening process for requesters or limitations on the use or distribution of information, and that the provisions potentially conflict with other anti-terrorism laws, and others.<sup>31</sup>

Linking its objection to the BATF finding that the West Fertilizer incident was due to criminal conduct, Petitioner RMP Coalition suggests:<sup>32</sup>

For example, EPA might have focused its proposal on enhanced security measures for facilities, strict scrutiny of the type of information that should be disclosed to LEPCs or the public, protections for that information, prohibitions against using any sensitive information from these facilities to cause harm to the public or the environment, or screening measures for third parties with access to the facility and its sensitive information.

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<sup>30</sup> CSAG Petition, pgs. 6-7. Document ID: EPA-HQ-OEM-2015-0725-0766.

<sup>31</sup> States Petition, pgs. 3-4. Document ID: EPA-HQ-OEM-2015-0725-0762.

<sup>32</sup> RMP Coalition Petition, pg. 16, Document ID: EPA-HQ-OEM-2015-0725-0759.



In the proposed RMP Amendments rule, under § 68.210 EPA proposed to require the owner or operator to distribute to the public in an easily accessible manner, such as on a company website, the following information:

- Names of regulated substances held in a process;
- SDSs for all regulated substances at the facility;
- The facility's five-year accident history required under § 68.42;
- Emergency response program information concerning the source's compliance with § 68.10(b)(3) or the emergency response provisions of subpart E, including:
  - Whether the source is a responding stationary source or a non-responding stationary source;
  - Name and phone number of local emergency response organizations with which the source last coordinated emergency response efforts, pursuant to § 68.180; and
  - For sources subject to § 68.95, procedures for informing the public and local emergency response agencies about accidental releases.
- Information on emergency response exercises required under § 68.96, including schedules for upcoming exercises, reports for completed exercises as described in § 68.96(b)(3), and any other related information; and
- LEPC contact information, including LEPC name, phone number, and website address as available.

In the final Amendments rule, EPA made only one change to this list – EPA revised the exercise information element to require the owner or operator to provide a list of scheduled exercises required under § 68.96, rather than the additional exercise information that was proposed. In so doing, EPA noted that, “The information required to be disclosed by this rule

largely draws on information otherwise in the public domain and simplified the public's access to it." EPA further stated, "Other statutes and regulatory programs, or other provisions of the risk management program, require the stationary source to assemble the information that the rule would make available upon request (e.g., accident history, SDSs, and aspects of the emergency response program)." (82 FR 4668, January 13, 2017).

Noting that many commenters on the proposed RMP Amendments rule had objected to the proposed public information availability provisions because, they argued, those provisions had the potential to create a security risk, EPA's primary method of addressing commenters' concerns was to require facility owners and operators to notify the public that certain information is available upon request, and only provide the information after receiving such a request. EPA indicated that this would "allow community members an opportunity to request chemical hazard information from a facility, so they can take measures to protect themselves in the event of an accidental release, while allowing facility owners and operators to identify who is requesting the information." (82 FR 4668, January 13, 2017).

Petitioners' comments summarized above indicate that EPA in the final amendments may not have struck the appropriate balance between various relevant policy concerns, including information availability, community right to know, minimizing facility burden, and minimizing information security risks. EPA agrees with petitioners that requiring unlimited disclosure of the chemical hazard information elements required under the RMP Amendments may create additional policy concerns, particularly with regard to the potential security risks created by disclosing such information.

A related concern not specifically raised by petitioners, but which EPA is now considering, is whether the synthesis of the required information disclosure elements could

create an additional security risk for facilities. EPA had not previously considered that the combination of mandatory disclosure elements as required under the Amendments is generally not already available to the public from any single source. EPA believes that the synthesis of the required chemical hazard and facility information may present a more comprehensive picture of the vulnerabilities of a facility than would be apparent from any individual element, and that therefore requiring it to be made more easily available to the public from a single source (i.e., the facility itself) could increase the risk of a terrorist attack on some facilities. For example, if a facility is required to disclose in synthesis and in one public source that it has experienced frequent accidental releases involving large quantities of highly toxic or flammable chemicals, does not maintain an on-site response capability, and is located a long distance away from the nearest public responders, the synthesis of this information might allow a criminal or terrorist to identify a relatively “softer” facility target for attack, or a target that if attacked could cause more damage to the facility and surrounding community due to a less timely response.

EPA’s proposal to rescind the public information availability provisions would address this concern, as well as petitioners’ and other commenters concerns about the lack of any appeals or vetting process for members of the public requesting facility information. Information on most of the required disclosure elements would still be available via other means, such as through an LEPC, by visiting a Federal RMP reading room, or making a request under the Freedom of Information Act (FOIA). FOIA requests require a name and U.S. state or territory address to receive information.<sup>33</sup> Federal Reading Rooms require photo identification issued by a Federal, state, or local government agency such as a driver's license or passport.<sup>34</sup> These requirements to accurately identify the party requesting the information may provide a deterrent

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<sup>33</sup> <https://foiaonline.regulations.gov/foia/action/public/request/createRequest>

<sup>34</sup> <https://www.epa.gov/rmp/federal-reading-rooms-risk-management-plans-rmp>

to those who seek to obtain chemical information for a facility for terrorist purposes without unduly impeding access to the information by those in the nearby community with a right-to-know. The current provisions in § 68.210 do not specify that requestors provide any particular identification. For example, if a facility is providing access to the required information by responding to email requests, requestors could receive information via email without verification of their true identity. While EPA's intent was to give the local community access to information "by facilitating public participation at the local level" and "allow people that live and work near a regulated facility to improve their awareness of risks to the community and to be prepared to protect themselves in the event of an accidental release" (82 FR 4668, January 13, 2017), the provisions have no limitation on the location or address of the requestors or whether the requestor must provide an accurate identification of their name and address. A justification cannot be made for those outside of the community to know, for example, a schedule of upcoming exercises, for the purpose intended.

EPA requests comments on its proposal to rescind the public information availability requirements of the final RMP Amendments rule. As an alternative to rescinding all of the public information elements, EPA request comments on rescinding all except the information on exercise schedules. If EPA maintains a field exercise requirement in the final rule, information on upcoming facility exercises would be the only item of information required to be disclosed in § 68.210(b) that is not already available from another source, and EPA maintains that providing the local community with this information could avoid unnecessary public concerns or panic during facility exercises.

Another element of publicly available information is the RMP information about local emergency response organizations. In § 68.180(a)(1) of the Amendments rule, EPA required the

owner or operator to provide the name, organizational affiliation, phone number, and email address of local emergency planning and response organizations with which the stationary source last coordinated emergency response efforts. EPA now proposes to modify this requirement to read: “Name, phone number, and email address of local emergency planning and response organizations....” This change would clarify that the Agency is only requiring organization-level information about local emergency planning and response organizations, and that facilities are not required to provide information about individual local emergency responders in order to reduce the amount of personally identifiable information available in facility RMPs. This could help avoid criminals or terrorists targeting individual emergency responders through identifying them using the publicly available portions of facility’s RMPs.

### 3. Public meeting after an accident

The public meeting requirement in § 68.210 (e) requires the owner/operator of a stationary source to “hold a public meeting to provide accident information required under § 68.42 as well as other relevant chemical hazard information, such as that described in paragraph (b) of this section, no later than 90 days after any accident subject to reporting under § 68.42.”

The requirement to provide “other relevant chemical hazard information” could be interpreted to be an overly broad requirement for information, similar to the requirement to provide “any other information that local emergency planning and response organizations identify as relevant to local emergency response planning” to LEPCs, which EPA is now proposing to rescind.

“Information, such as that described in paragraph (b) of this section” is referring to the same chemical hazard information that is required to be provided upon request to the public. As discussed in section IV.B.2. of this preamble “Information Availability”, all three of the petitioners had security concerns with providing this type of information with no screening

process for requesters or limitations on the use or distribution of information. Based on the reasoning provided in sections IV.B.1 and 2 of this preamble, EPA proposes to rescind the requirement to provide at the public meeting “other relevant chemical hazard information, such as that described in paragraph (b) of this section.”

CSAG’s petition<sup>35</sup> cited additional concerns with the public meeting requirement:

The requirement to hold a public meeting within 90 days after any reportable accident is overly broad. It is not necessary for facilities to hold a public meeting every time that a release occurs. EPA provided no evidence that public meetings were requested or needed and not held under pre-existing rules. Often a release does not warrant a public meeting and the expense should not be imposed automatically. See CSAG Proposed Rule Comments, at pg. 17.

A public meeting is not required under the 2017 Amendments every time that a release occurs, but only after an accident occurs that is subject to reporting under § 68.42. Those are accidents that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. EPA believes that having a public meeting so that community members may learn more about the causes of an accident that resulted in such impacts, and the facility’s plans to address those causes is warranted. A public meeting also gives members of the community an opportunity to ask questions directly of the facility about issues that concern them. Therefore, EPA proposes to retain the public meeting requirement in § 68.210 (e), modified to require that the owner or operator provide only accident information required under § 68.42 (b) no later than 90 days after any reportable accident. However, EPA requests public comment on whether the Agency should further limit the public meeting requirement to apply only after accidents that meet certain criteria, such as accidents with offsite impacts specified in § 68.42 (a) (i.e., known

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<sup>35</sup> CSAG Petition, pg. 21, Document ID: EPA-HQ-OEM-2015-0725-0766.

offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage)? In comments on the RMP Amendments rule, commenters stated that the public would not attend a meeting after a minor incident, but recommended holding a public meeting for an event with major offsite impacts.<sup>36</sup> Would members of communities surrounding RMP facilities be less likely to attend post-accident public meetings if the accident had no offsite public or environmental impacts?

Additionally, EPA requests public comment on the required time frame for public meetings. In the proposed Amendments rule, EPA had proposed that post-accident public meetings be required within 30 days. Several commenters claimed that this time frame was too short, and would cause owners and operators to divert resources away from post-accident investigations.<sup>37</sup> However, other commenters agreed with EPA's proposed 30-day time frame, and one commenter recommended that the meeting should occur within two weeks of the accident. Although the final Amendments rule required public meetings to occur within 90 days of an accident and this proposal would not change that time frame, EPA is again considering whether public meetings should be required sooner than 90 days after an accident. Would a shorter time frame, such as 30, 45, or 60 days, be more useful to surrounding communities without unduly impeding facilities' post-accident recovery and investigation activities?

In establishing the requirement for the owner or operator to provide accident information required under § 68.42 at public meetings, we have not previously specified whether it requires the owner or operator to provide at the meeting, accident information for only the accident triggering the public meeting, or, if the facility has multiple accidents in its five-year accident

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<sup>36</sup> See document IDs EPA-HQ-OEM-2015-0725-0492, and EPA-HQ-OEM-2015-0725-0542 in the docket.

<sup>37</sup> See Response to Comments on the 2016 Proposed Rule Amending EPA's Risk Management Program Regulations (March 14, 2016; 81 FR 13637), EPA-HQ-OEM-2015-0725-0729, pgs. 207-209.

history, for all such accidents. EPA did not intend that the public meeting cover providing information for all reportable accidents over the last five years. EPA proposes to amend the public meeting provision to require the information listed in § 68.42 (b) for only the most recent accident, and not for previous accidents covered by the 5-year accident history requirement of § 68.42(a). This proposed modification should provide clarity for the regulated community regarding the public meeting requirements. Nevertheless, EPA requests comments on this issue – should the public meeting provision require providing information on all accidents in a facility’s five-year accident history?

Because EPA proposes to rescind the requirements in § 68.210(b) for the owner or operator to provide chemical hazard information to the public upon request and to provide “other relevant chemical hazard information” at public meetings after a reportable accident, EPA proposes to delete the provision for CBI in § 68.210 (g), as unnecessary. The proposed revised public meeting provision would only require the owner or operator to provide data specified in the source’s five-year accident history (§ 68.42), which is not allowed to be claimed as CBI under § 68.151(b)(3). The owner or operator may provide additional information during public meetings, but is not required to do so.

### *C. Address BATF finding on West Fertilizer incident*

Petitioner RMP Coalition asserted that it was impracticable for commenters to address in their comments the significance of the May 11, 2016 determination by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF) that the fire and explosion at the West Fertilizer facility was caused by an intentional, criminal act. Petitioner further stated:<sup>38</sup>

As the primary driver behind the Executive Order that inspired this rule, and the focus of EPA’s introduction to the Proposed Rule, the circumstances surrounding the West, Texas,

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<sup>38</sup> RMP Coalition Petition, pg. 16, EPA-HQ-OEM-2015-0725-0759.



incident highlight the risks central to the Final Rule. Knowing that the incident was intentional would could [*sic*] have impacted the scope of the Executive Order, certainly have changed the comments EPA received, and likely would have caused EPA to construct its proposed and final rules differently had it known of these circumstances at the time of the proposed rulemaking. For example, EPA might have focused its proposal on enhanced security measures for facilities, strict scrutiny of the type of information that should be disclosed to LEPCs or the public, protections for that information, prohibitions against using any sensitive information from these facilities to cause harm to the public or the environment, or screening measures for third parties with access to the facility and its sensitive information. Reliance on the E.O. as a predicate for this rule, combined with the West, Texas, investigation results further merits reconsideration of the EPA's RMP Final Rule.

In responding to this petition, EPA Administrator Pruitt agreed that the timing of the BATF finding was a valid basis for reconsideration of the RMP Amendments rule:<sup>39</sup>

Among the objections raised in the petition that meet the requirements for a petition for reconsideration under CAA section 307(d)(7)(B), we believe the timing of the BATF finding on the West, Texas incident, which was announced just before the close of the public comment period, made it impracticable for many commenters to meaningfully address the significance of this finding in their comments on this multi-faceted rule. Prior to this finding, many parties had assumed that the cause of the incident was accidental. Additionally, the prominence of the incident in the policy decisions underlying the rule makes the BATF finding regarding the cause of the incident of central relevance to the Risk Management Program Amendments.

EPA agrees that the West, Texas, incident was prominent in the issuance of Executive Order 13650 and the consideration for the final RMP Amendments rule. In the Executive Order 13650 Report for the President, the Chemical Facility Safety and Security Working Group, of which EPA serves as one of three tri-chairs, stated<sup>40</sup>:

The West, Texas, disaster in which a fire involving ammonium nitrate at a fertilizer facility resulted in an explosion that killed 15 people, injured many others, and caused widespread damage, revealed a variety of issues related to chemical hazard awareness, regulatory coverage, and emergency response. The Working Group has outlined a suite of actions to address these issues, such as:

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<sup>39</sup> March 13, 2017 letter from EPA Administrator E. Scott Pruitt to Justin Savage, Esq., Hogan Lovells US LLP. Letter available in the docket for this rulemaking. EPA-HQ-OEM-2015-0725-0758.

<sup>40</sup> Executive Order 13650 Actions to Improve Chemical Safety and Security – a Shared Commitment, Report for the President, May 2014, page 1, EPA-HQ-OEM-2015-0725-0246.

- Strengthening State and local capabilities
- Expanding tools to assist emergency responders
- Enhancing awareness and increasing information sharing with communities around chemical facilities
- Increasing awareness of chemical facility safety and security regulatory responsibilities
- Pursuing rulemaking options for changes to EPA, OSHA, and DHS standards to improve safety and security, including potential changes specific to ammonium nitrate.

The “changes to EPA...standards” ultimately became the RMP Amendments final rule, where EPA again acknowledged the prominence of the West Fertilizer incident:<sup>41</sup>

The purpose of this action is to improve safety at facilities that use and distribute hazardous chemicals. In response to catastrophic chemical facility incidents in the United States, including the explosion that occurred at the West Fertilizer facility in West, Texas, on April 17, 2013 that killed 15 people (on May 11, 2016, ATF ruled that the fire was intentionally set.) President Obama issued Executive Order 13650, “Improving Chemical Facility Safety and Security,” on August 1, 2013.

As indicated above, the final RMP Amendments rule acknowledged the BATF finding concerning the cause of the West Fertilizer incident. 82 FR at 4594, January 13, 2017.

Notwithstanding this finding, EPA maintained that the incident still highlighted the need for better coordination between facility staff and local emergency responders. EPA also highlighted in the RMP Amendments Rule other incidents that further supported the need for better coordination between facility staff and local emergency responders (e.g., BP Refinery incident in Texas City, TX; Tesoro Refinery incident in Anacortes, WA). EPA reaffirms this view, and this proposal would preserve the emergency response coordination enhancements of the RMP Amendments rule with minor modifications to address valid security concerns raised by petitioners. Our proposal also would rescind virtually all changes to the accident prevention provisions of Subparts C and D made in the RMP Amendments rule, as well as the public information availability provisions (except for the requirement to hold a public meeting after an

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<sup>41</sup> 82 FR 4594, January 13, 2017.

accident), and make modifications to the emergency exercise provisions. EPA primarily justifies herein these proposed rescissions and modifications on bases other than the BATF finding.

However, the BATF finding informs EPA's concern, expressed above, that the Amendments may not have struck the appropriate balance between multiple policy considerations, including but not limited to information security and community right to know.

The BATF finding was contrary to the widespread belief among the public and regulated community during development of the proposed RMP rule that the West incident was the result of an accident. Considering the timing of BATF's announcement, and that few commenters made reference to the finding in their comments on the proposed RMP Amendments rule, EPA is requesting further public comment on the significance of the BATF finding to the final RMP Amendments rule, and this proposal. When we solicited comment during the rulemaking to delay the effective date of the RMP Amendments to February 19, 2019, several commenters criticized the methodology used by BATF in support of its finding regarding the cause of the West Explosion. See 82 FR 27140, June 14, 2017. These commenters claimed the BATF used a process of elimination called "negative corpus" to develop its conclusion rather than a more sound investigative methodology.<sup>42</sup> BATF provided EPA an explanation of methodology used in their investigation, which did not rely on "negative corpus" but relied on the scientific method as explained in the 2014 Edition of the NFPA 921 Guide for Fire and Explosion Investigations and by considering the significant evidence, artifacts, and information collected.<sup>43</sup> BATF continues to have an award posted for information leading to an arrest of the person or persons responsible for the fire and subsequent explosion at the West Fertilizer facility. EPA defers to

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<sup>42</sup> See Response to Comments on the 2017 Proposed Rule Further Delaying the Effective Date of EPA's Risk Management Program Amendments (April 3, 2017; 82 FR 16146), EPA-HQ-OEM-2015-0725-0881, pgs. 32-33.

<sup>43</sup> BATF. 2016. Excerpt from West Fertilizer Investigation Report regarding investigation methodology. US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.

BATF expertise in determining the cause of the West Fertilizer fire and explosion and the validity of investigation methods. We also believe we should strike a different balance between security and safety with respect to information disclosure and security for the reasons stated above, and solicit comment on this view. Does the BATF finding provide additional justification for EPA rescinding the STAA, third-party audit, incident investigation, and information availability provisions of the RMP Amendments rule? Do EPA's proposed changes to the emergency response coordination provisions preserve the Agency's goal of better coordination between facility staff and local emergency responders that it sought in the final RMP Amendments rule while resolving petitioners' security concerns? Does the BATF finding have any significance for EPA's proposed revisions to the emergency exercise provisions, or alternatively, their rescission?

*D. Reduce unnecessary regulations and regulatory costs*

1. Petitioners' comments on costs and EPA's economic analysis

All three petitioners objected to the costs and burdens associated with the new provisions of the RMP Amendments rule, and claimed that EPA's economic analysis did not accurately assess the costs of new provisions and violated procedural requirements by not quantifying potential benefits or linking specific rule provisions to quantified benefits. Most of these objections were variations of the comments previously provided on issues raised in the proposed RMP Amendments rule.<sup>44</sup> Without deciding whether reconsideration of any particular objection meets the standard of CAA section 307(d)(7)(B), EPA is using its discretion to reopen its consideration of regulatory costs of the Amendments in this reconsideration proceeding.

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<sup>44</sup> Compare RMP Coalition Petition, pgs.8-10, EPA-HQ-OEM-2015-0725-0759 to American Fuel & Petrochemical Manufacturers (AFPM) May 13, 2016 comments on RMP proposed rule (81 FR 13638, March 14, 2016), part 1 of 2, pgs. 56-59, EPA-HQ-OEM-2015-0725-0579.

In developing the 1996 RMP rule, the Agency addressed the reasonableness of its regulations in part by taking account of the costs and implementation burdens. See 61 FR 31668, 31717 (June 20, 1996). For example, EPA shifted from an initially proposed approach of requiring all source prevention programs to be based on the PSM standard to requiring PSM standard-based prevention programs only for sources already subject to the PSM standard or in high-accident sectors; EPA allowed other sources subject to the risk management program to use more streamlined prevention requirements. Additionally, EPA developed tools and parameters to simplify offsite consequence analyses for release scenarios. The Agency also centralized risk management plan submissions, standardizing the format and establishing an electronically accessible database, in order to relieve multiple agencies of data management burdens and to simplify compliance for small businesses. While not explicitly adopting a requirement that costs exceed benefits in the 1996 rule, EPA helped justify the various modifications between the RMP proposal of 1993 and the final rule of 1996 by noting large cost reductions relative to prior proposed approaches without significant loss of benefits. See, e.g., 60 FR 13526, 13527, March 13, 1995 (prevention program); *id.* at 13533 (dispersion lookup tables); 61 FR at 31695, June 20, 1996 (burden reducing effect of electronic submission).

In developing the RMP Amendments, EPA also considered costs and burdens in deciding not to propose certain options and to modify or not go forward with various provisions in the final rule. For example, EPA chose not to propose requiring all Program 2 and 3 facilities to implement an emergency response program; See 81 FR 13674 (March 14, 2016), or perform emergency exercises. *Id.* at 13677. In the final Amendments rule, EPA chose not to incorporate commenters' suggestion that EPA require third-party audits for all RMP facilities with Program

2 or 3 processes, see 82 FR 4617 (January 13, 2017); and EPA chose to reduce the required frequency of field and tabletop exercises from what had initially been proposed. *Id.* at 4662.

While at the time we promulgated the final Amendments rule we believed the costs of the rule were reasonable in relation to its benefits, we are reexamining the reasonableness of the Amendments in light of three newly promulgated Executive Orders that require Agencies to place greater emphasis on reducing regulatory costs and burdens. These Executive Orders, and their relationship to this proposal, are discussed below. The agency acknowledges that the continual decrease in accidental releases under the existing RMP rule is evidence that the existing rule is working and that additional costs may not justify the additional requirements. EPA is uncertain about whether the additional requirements (i.e., third party audits, STAA, and root cause analysis) add environmental benefits beyond those provided by the existing requirements that are significant enough to justify their added costs. EPA will carefully examine the provisions of the RMP Amendments for their costs and benefits in implementing the statutory provisions of CAA section 112(r)(7).

2. New Executive Orders on reducing regulation, regulatory reform, and promoting energy independence and economic growth

In the final Delay Rule published June 14, 2017,<sup>45</sup> EPA said the following: “During the reconsideration, EPA may also consider other issues, beyond those raised by petitioners, that may benefit from additional comment, and take further regulatory action.” One such issue that EPA believes it should consider is the policies of the President that are reflected in the new Executive Orders. Each of these Executive Orders was promulgated shortly after the final RMP Amendments rule was published.

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<sup>45</sup> 82 FR 27133, June 14, 2017

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs” of January 30, 2017, says that any new incremental costs associated with new regulation shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.<sup>46</sup>

Executive Order 13777, “Enforcing the Regulatory Reform Agenda” of February 24, 2017, calls for agency Regulatory Reform Task Forces to identify regulations that, among other things, impose costs that exceed benefits, evaluate these regulations and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.<sup>47</sup>

Executive Order 13783, “Promoting Energy Independence and Economic Growth” of March 28, 2017, directs executive departments and agencies to immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.<sup>48</sup> This Executive Order also directs that environmental regulations have greater benefits than cost, when permissible under law.

In addition to the justifications discussed previously (i.e., to maintain consistency in accident prevention programs and address security concerns), an important factor in selecting the provisions of the final RMP Amendments rule that EPA seeks to rescind or modify with this proposal is that these provisions would otherwise place substantial economic burdens on

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<sup>46</sup> See Executive Order 13771: “Reducing Regulation and Controlling Regulatory Costs” which was signed on January 30, 2017 and published in the Federal Register on February 3, 2017 (82 FR 9339).

<sup>47</sup> See Executive Order 13777: “Enforcing the Regulatory Reform Agenda” which was signed on February 24, 2017 and published in the Federal Register on March 31, 2017 (82 FR 12285).

<sup>48</sup> See Executive Order 13783: “Promoting Energy Independence and Economic Growth” which was signed on March 28, 2017 and published in the Federal Register on March 31, 2017 (82 FR 16093).

regulated entities, potentially contravening the new policy direction set in these new Executive Orders. In addition, such burdens are directly relevant to whether the Amendments are “practicable” for sources, as that term is used in CAA section 112(r)(7). In deciding whether the Amendments are “reasonable,” consistent with the President’s policy direction, EPA is now placing greater weight on the uncertainty of the accident reduction benefits than we had when we promulgated the RMP Amendments, especially in contrast to the extensive record on the costs of the rule. In determining whether rescinding or modifying particular provisions is reasonable and practicable, we examined each on its merits and in the context of the policy direction reflected in the new Executive Orders. EPA notes that while further analysis of the reasonableness and practicability of the Amendments is in keeping with the principles articulated in the new Executive Orders, such an analysis would be appropriate even without the Executive Orders, and the Agency retained the discretion to do so prior to their promulgation.

### 3. Costs of STAA, third-party audits, and incident investigation root cause analysis.

STAA is by far the costliest provision of the RMP Amendments rule. EPA estimated that this provision would cost \$70 million on an annualized basis. This represents over 53% of the total estimated costs of the rule (\$131.8 million annualized at a 7% discount rate). EPA estimated that third-party audits would cost approximately \$9.8 million on an annualized basis, and that incident investigation root-cause analysis would cost approximately \$1.8 million on an annualized basis.

Petitioners for reconsideration raised objections to the costs and other burdens of these provisions. For example, CSAG complained of “ill-defined and potentially expansive triggers for third party auditing,” as well as reports from such audits and “restrictive qualifications” for auditors as imposing significant burdens beyond what we quantified. The RMP Coalition noted



the potential need for sources to duplicate Process Hazard Analysis (PHAs) during the phase-in of STAA under the requirement to complete a PHA with STAA by 4 years after the promulgation of the Amendments.

In the RMP Amendments, EPA had judged the costs of STAA to be reasonable based on two assumptions, one explicit and one implicit. First, we explicitly assumed that, whatever the cost of a new safer technology alternative, a company would incur such costs only if it were net beneficial to the company. Amendments RTC at 70. We then implicitly assumed that an unknown but sufficient fraction of the three affected industries would in fact implement changes as a result of having performed STAA to make the requirement to conduct STAA assessments reasonable. Nevertheless, the Agency also acknowledged that no benefits would accrue from implementing STAA unless facilities subject to the requirement voluntarily elect to implement a safer technology. EPA did not account for the indirect costs of implementing safer technologies and alternatives in the RMP Amendments rule, but in the RIA provided examples of safer technologies that could cost as much as \$500 million (converting hydrogen fluoride (HF) alkylation unit to sulfuric acid) or \$1 billion (converting a paper mill from gaseous chlorine bleaching to chlorine dioxide). Therefore, not only are the known costs of complying with this provision high, indirect costs could also be incurred, if facilities take actions based on the results of their STAA (or based on external pressures to implement STAA recommendations regardless of whether they are necessary or practical). Lastly, given the application of the current requirements, the Agency now questions the implicit assumption that a sufficient number of sources would implement STAA improvements to offset the costs of the provision.

Both the third-party auditing and the root cause incident investigation provisions trigger after one incident - either a reportable accident for third-party auditing or a catastrophic release

for a root-cause investigation. Data analysis provided by the American Chemistry Council (ACC) to support the RMP Coalition Petition demonstrates that accidents, and especially patterns of multiple accidents, are concentrated in very few facilities. Of the approximately 1500 reportable accidents in EPA's RMP database from the years 2004 to 2013, only 8% of the 12,500 facilities subject to the RMP rule reported any accidental releases, while the less than 2% of facilities that reported multiple releases in that time frame were responsible for nearly half (48%) of reportable accidents from all types of facilities. Within NAICS code 325, the chemical manufacturing industry, of the 1465 facilities subject to the RMP rule, 99 facilities with multiple reportable accidents were responsible for approximately 70% of all reportable accidents in the sector and more than one-third of all reportable accidents.<sup>49</sup> Other studies have also found a history of past accidents is a strong predictor of future accidents.<sup>50</sup>

Several commenters during the rulemaking asked that EPA emphasize enforcement rather than amend the RMP rule. The data (as analyzed by ACC in its petition) tend to support the reasonableness of an enforcement-led approach to strengthening accident prevention that focuses on problematic facilities rather than broader regulatory mandates. Under the RMP rule as it existed before the RMP Amendments, EPA has required third-party audits in resolving enforcement actions not only after reported releases but also when inspections have indicated potentially weak prevention programs. By requiring third-party audits after every reportable accident rather than using an enforcement-led approach, the RMP Amendments potentially

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<sup>49</sup> EPA. March 9, 2017. Notes and Documentation Related to a March 9, 2017 Meeting between the RMP Coalition and EPA regarding a Petition for Reconsideration of the RMP Amendments rule (82 FR 4594, January 17, 2017). USEPA, Office of Emergency Management.

<sup>50</sup> Kleindorfer, P.R., Belke, J.C., Elliot, M.R, Lee, K., Lowe, R.A., and Feldman, H.I., 2003. Accident Epidemiology and the U.S. Chemical Industry: Accident History and Worst-Case Data from RMP\*Info, Risk Analysis, Vol.23, No. 5, pgs. 865-881. See Table IV, pg. 872.  
<https://pdfs.semanticscholar.org/f0c9/f27d670a6ea77187aeb3f78ca0ced444db8b.pdf>

burden more of the regulated community than is appropriate in light of new policy direction that we put more emphasis on regulatory burden reduction and improved net benefits. An enforcement-led approach allows the agency additional discretion to make a determination of the utility of a third-party audit or a root-cause analysis. While EPA believes an enforcement-led approach is preferable to a uniform regulatory standard for third party audits and root cause analyses, the Agency requests public comment on whether a third-party audit or root-cause analysis should be required under certain well-defined regulatory criteria. For third party audits, such criteria might include requiring audits following multiple RMP-reportable accidents, or multiple regulatory violations of a particular gravity. For root-cause analyses, EPA could consider requiring such analyses following incidents exceeding specified severity levels. Although it is not our intent at this time to adopt such provisions, we invite parties to suggest appropriate regulatory criteria for third party audits and root-cause analyses.

For third party audits, while EPA cited a number of studies relating to the usefulness of such audits in various contexts,<sup>51</sup> EPA is particularly interested in gaining additional information relating to third-party audit programs relevant to process safety auditing. The most directly analogous programs reviewed by EPA included programs relating to boiler safety, medical device safety, food and product safety, hazardous waste site cleanups, and compliance with waste treatment and underground storage tank regulations, but even these programs do not involve review of production processes as complex as modern refineries and chemical manufacturing plants. When EPA first took comment on third party oversight in 1995<sup>52</sup>, we examined whether such oversight would be appropriate for sectors with simpler processes, and EPA's own RMP third party audit pilot project conducted with the Wharton School of the

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<sup>51</sup> See 81 FR 13656 – 58, March 14, 2016 and 82 FR 4620 – 25, January 13, 2017.

<sup>52</sup> See 60 FR 13530. March 13, 1995.

University of Pennsylvania involved simpler processes.<sup>53</sup> Should EPA consider limiting third party audits to relatively simple or common processes where experts could apply transferable expertise more easily than in more complex processes? Are there other ways to more narrowly tailor applicability to appropriate RMP facilities without broadly burdening the RMP-regulated universe with a third-party audit requirement? Should third party audits only be mandated for facilities with multiple incidents? Some critics of the RMP Amendments have particular concerns about whether parties that meet the strict independence criteria of the RMP Amendments would be able to understand these complex processes enough to make strong recommendations in an audit. Should the agency consider modifying the independence criteria in any future third-party audit provision?

Likewise, by burdening whole sectors rather than facilities that have multiple accidents, the RMP Amendments missed an opportunity to better target the burdens of STAA to the specific facilities that are responsible for nearly half of the accidents associated with regulated substances at stationary sources subject to the RMP rule. EPA has also used an enforcement-led approach in some past CAA section 112(r) enforcement cases where facility owners or operators have entered into consent agreements involving implementation of safer alternatives as discussed in the proposed RMP Amendments rule. See 82 FR at 13664, March 16, 2016.

Given the small numbers of problematic facilities, the reasonableness of an enforcement-led approach to the prevention programs under the RMP rule in lieu of the RMP Amendments leads us to believe that the prevention program provisions in the RMP Amendments place an

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<sup>53</sup> EPA conducted a pilot study with the Wharton School of the University of Pennsylvania on the efficacy of voluntary third-party RMP audits. For relevant reports from this pilot, see R. Barrish, R. Antoff, & J. Brabson, Dep't of Natural Resources & Env. Control, Third Party Audit Pilot Project in the State of Delaware, Final Report (June 6, 2000) <http://opim.wharton.upenn.edu/risk/library/2000>, Document ID EPA-HQ-OEM-2015-0725-0658 and EPA Region 3, Third-Party Pilot Project in the Commonwealth of Pennsylvania, Final Report (February 2001), Document ID, EPA-HQ-OEM-2015-0725-0651.

unnecessary and undue burden on regulated entities. In lieu of broadly imposing STAA in particular on broad sectors, an enforcement-led approach can retain much benefit of the RMP Amendments at a fraction of the cost. Such an approach would contain a compliance assistance element as well. Targeted compliance assistance could provide the benefit of independent assistance to sources that have had multiple releases with more flexibility than the third-party audit provisions of the RMP Amendments. Such a program would be consistent with a measure included in the President's proposed budget that would authorize a fee-based program allowing owners and operators to request EPA to conduct a walk-through of their facilities to assist in compliance. Another non-regulatory option to promote IST and ISD would be to encourage technology transfer, either through EPA-led forums or through non-governmental entities like industry associations or academic institutions. By not establishing any means for sharing IST and ISD beyond the facility, the RMP Amendments did little to promote technology-transfer. An approach that emphasizes voluntary technology-transfer would be consistent with the statutory provision to "recognize . . . the voluntary actions of [facilities] to prevent . . . and respond to [accidental] releases." CAA section 112(r)(7)(B)(i). Emphasizing burden reduction while retaining benefits is consistent with the approach we took when we adopted the RMP rule in 1996.

It is also possible that the existing rule's prevention program measures already encompass many of the benefits of the Amendments rule prevention provisions – some facilities may already be considering safer technologies in conjunction with their process hazard analysis, using root cause analysis for incident investigations, and/or hiring independent third parties to conduct audits. Considering the low and declining accident rate<sup>54</sup> at RMP facilities under the

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<sup>54</sup> See Reconsideration RIA, Exhibit 3-7

existing RMP rule, the Agency believes it is likely that the costs associated with the prevention program provisions of the RMP Amendments exceed their benefits unless significant non-monetized benefits are assumed. Thus, we recommend rescinding them in accordance with the direction reflected in E.O. 13777. Rescinding these provisions would also allow EPA greater flexibility to offset the incremental costs associated with other new regulations in accordance with E.O. 13771.

Additionally, the STAA costs are concentrated on three industry sectors – petroleum and coal products manufacturing, chemical manufacturing, and paper manufacturing – which include a significant number of facilities that produce domestic energy resources. Therefore, this provision in particular appears to be a good candidate for rescission to achieve the policies reflected in E.O. 13783.

#### 4. Costs of Information Availability.

For providing the public the means to access the available chemical hazard information in § 68.210(b), as well as information on community preparedness, in the RMP Amendments rule EPA required the regulated facility to provide ongoing notification on a company web-site, social media platforms, or through other publicly accessible means for instructions on how to request the information (*e.g.* email, mailing address, and/or telephone or web-site request). The facility is required to identify this publicly accessible means in their RMP submission [§ 68.160 (b)(21) –“Method of communication and location of the notification that chemical hazard information is available to the public, pursuant to § 68.210(c) ”]. Unless a member of the public discovered the means to access the information through their own efforts or were notified by outreach efforts of the facility, they would need to access the facility’s RMP submission to determine how to obtain the chemical hazard information available under § 68.210(b). However,

most of the § 68.210(b) chemical hazard information elements are already in the RMP submission, as it already contains, among other information, the names of regulated substances held above threshold quantities, the facility's five-year accident history, whether the facility is a responding or non-responding stationary source, the name and phone number of the local response organization involved in emergency response coordination, and the LEPC name.

One chemical hazard information item required to be provided under § 68.210(b) that is not available in a facility's RMP is the Safety Data Sheet (SDS) for a regulated substance. However, SDSs are already widely available to the public by means of a basic internet search using the chemical name. Some chemical manufacturers provide access to SDSs for their specific products on the company's website. Hazardous chemical SDSs that are required to be submitted to State Emergency Response Commissions (SERCs) and LEPCs under Section 311 of EPCRA (42 U.S.C. 11044) are available to the public upon request from the SERC or LEPC, except the identity of any chemical name meeting the criteria for trade secret protection provided by Section 322 of EPCRA (42 U.S.C. 11042) may not be disclosed.

In addition to chemical hazard information, § 68.210(b) requires the facility to provide emergency response program information (including whether the stationary source is a responding stationary source or a non-responding stationary source, the name and phone number of local emergency response organizations with which the owner or operator last coordinated emergency response efforts, and for stationary sources subject to § 68.95, procedures for informing the public and local emergency response agencies about accidental releases), LEPC contact information (including LEPC name, phone number, and web address as available), and a list of scheduled exercises required under § 68.96. Most of this information is also already available in the facility's RMP. The only required item of emergency response program

information that is not available in the facility's RMP is the facility's procedure for informing the public and local emergency response agencies about accidental releases. However, this information can be obtained by contacting the appropriate local response agencies. A member of the public living near a facility can identify their LEPC either by reviewing the facility's RMP, or by contacting their SERC. EPA maintains contact information for each SERC on its website.<sup>55</sup>

Therefore, once a member of the public obtains a facility's RMP, the need to make a request to that facility for the elements contained in the RMP would be eliminated, and most other elements are available using the Internet or by contacting local response agencies. In promulgating the Amendments, EPA overlooked the apparent redundancy of requiring the public to obtain a facility's RMP in order to find out how to request the information authorized for disclosure under § 68.210(b). For this reason, as well as the availability of information from other public data sources, EPA now believes that the additional burden for facilities to provide these information elements directly to the public is not justified and that these provisions are good candidates for rescission to further the policies reflected in Executive Orders 13771 and 13777.

As indicated above, if EPA maintains a field exercise requirement in the final rule, information on upcoming facility exercises would be the only item of information required to be disclosed in § 68.210(b) that is not already available from another source. EPA nevertheless is proposing not to require disclosure of exercise schedules. As stated previously, there is no easy way to restrict that information to only members of the local public, and wider distribution of

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<sup>55</sup> <https://www.epa.gov/epcra/local-emergency-planning-committees> Contains contact information for each SERC, names, address and Websites for each SERC.



this information could carry security risks. Nevertheless, the Agency requests public comment on whether information on upcoming exercises should still be required to be provided to members of the public upon request.

#### 5. Costs of Field and Tabletop Exercises.

After STAA, field and tabletop exercises were estimated to be the next costliest provision of the RMP Amendments rule, at \$24.7 million per year. While the majority of these costs were projected to fall on regulated facilities, EPA also projected that a significant share of costs would fall on local emergency responders participating in field and tabletop exercises.<sup>56</sup> Petitioner States indicated that emergency coordination and exercise costs would place significant burdens on state and local responders.<sup>57</sup> Petitioner States also claimed that EPA understated costs for these provisions and did not show benefits.<sup>58</sup> Petitioner CSAG made similar claims.

The agency is not certain that it properly assessed the actual demands of these provisions or the increased burden on LEPCs in the final rule. EPA agrees that these provisions, and particularly the emergency exercise provisions, would place substantial burdens on regulated facilities and local responders. Local responders with multiple facilities in their area are particularly impacted by the minimum exercise frequency requirement. EPA's proposal herein would retain the emergency response coordination provisions (with proposed modifications) and emergency notification drill provisions, and modify the field and tabletop exercise provisions by removing the minimum exercise frequency requirements for field exercises and modifying exercise scope and documentation requirements to provide more flexibility to regulated facilities. As alternatives to modifying the frequency, scope, and documentation requirements, EPA has

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<sup>56</sup> See final rule RIA, page Exhibits 4-7 and 4-8, page 47.

<sup>57</sup> States Petition, pgs. 4-5, Document ID: EPA-HQ-OEM-2015-0725-0762.

<sup>58</sup> States Petition, pg. 5, Document ID: EPA-HQ-OEM-2015-0725-0762.

considered either fully rescinding the emergency field and tabletop exercise provisions or modifying them by removing the minimum exercise frequency requirement for field exercises but retaining the existing requirements for scope and documentation of field and tabletop exercises. EPA believes that any of these alternatives would reduce the regulatory burden on both facilities and local responders.<sup>59</sup>

EPA's proposed revisions to § 68.96(b)(1)(ii) and § 68.96(b)(2)(ii) – the scope provisions for field and tabletop exercises, respectively – would provide the owner or operator with discretion to decide on an appropriate scope for exercises. In the RMP Amendments rule, EPA stated that field exercises shall include: tests of procedures to notify the public and the appropriate Federal, state, and local emergency response agencies about an accidental release; tests of procedures and measures for emergency response actions including evacuations and medical treatment; tests of communications systems; mobilization of facility emergency response personnel, including contractors, as appropriate; coordination with local emergency responders; emergency response equipment deployment; and any other action identified in the emergency response program, as appropriate. For tabletop exercises, EPA stated that exercises shall include discussions of: procedures to notify the public and the appropriate Federal, state, and local emergency response agencies; procedures and measures for emergency response including evacuations and medical treatment; identification of facility emergency response personnel and/or contractors and their responsibilities; coordination with local emergency responders; procedures for emergency response equipment deployment; and any other action identified in the

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<sup>59</sup> Note, however, that the RIA for this rulemaking retains the cost estimate for exercises from the Amendments rule. See Reconsideration RIA, Ch. 4. EPA retained this estimate as a conservative approach to estimating exercise costs under this proposal. By removing the minimum frequency requirement for field exercises and encouraging facilities to conduct joint exercises and using exercises already conducted under other requirements to meet the requirements of the RMP rule, EPA expects that the total number, and therefore costs, of exercises held for compliance with the rule is likely to be lower than this estimate.

emergency response plan, as appropriate. EPA is proposing to replace “shall” with “should” in both provisions. While EPA believes that these scope provisions are likely to be suitable guidelines for most facilities, the Agency believes that converting them to discretionary provisions (i.e., “should”) will allow owners and operators to coordinate with local responders to design exercises that are most suitable for their own situations. Alternatively, EPA considered retaining the exercise scope provisions as stated in the final RMP Amendments rule. EPA requests comments on its proposed revisions to the field and tabletop scope provisions. Would EPA’s proposed changes reduce the burden of the exercise requirements on owners and operators and local responders by allowing them to design exercises that are tailored to their own circumstances?

EPA’s proposed revisions to § 68.96(b)(3) *Documentation*, would retain the RMP Amendments rule requirement that the owner/operator prepare an evaluation report within 90 days of each exercise. However, the contents of the report would be discretionary. In the RMP Amendments rule, EPA stated that the report shall include: A description of the exercise scenario; names and organizations of each participant; an evaluation of the exercise results including lessons learned; recommendations for improvement or revisions to the emergency response exercise program and emergency response program; and a schedule to promptly address and resolve recommendations. EPA is proposing to replace “shall” with “should” in this provision. While EPA continues to believe that it is important to prepare an evaluation report for each exercise in order to identify lessons learned and share results with others involved in responding to releases, the Agency believes it may be reasonable to allow owners and operators discretion on the contents of the report. Allowing such flexibility in documenting exercises would also allow owners and operators to create separate exercise documents and/or appendices

in such documentation that clearly distinguish content that should be shared with local emergency responders from security-sensitive content that should be closely held by the owner or operator. Alternatively, EPA considered retaining the exercise documentation requirement as stated in the final RMP Amendments rule. EPA requests comments on its proposed revision to the exercise documentation requirements. Should the requirement for exercise evaluation reports be retained, but altered to provide more flexibility to regulated facilities?

#### 6. Stakeholder Input on Cost Reductions.

EPA requests public comment on the cost and burden reductions associated with the proposed rule. Would eliminating the STAA, third-party audit, incident investigation, and information availability provisions and modifying or rescinding the field and tabletop exercise provisions contribute toward the goals of Executive Orders 13771, 13777, and 13783 and address petitioners' and other commenters' concerns about excessive regulatory costs and unjustified burdens? Are there any data from chemical accident or toxic use reduction programs that demonstrates a substantially lower accident rate at existing facilities that already had successful accident prevention programs in place and then conducted Inherently Safer Technology or Design (IST/ISD) reviews or otherwise conducted chemical substitution to lower chemical hazards? EPA's proposal to modify the emergency exercise provisions would retain the RMP Amendments rule requirement for regulated facilities to coordinate with local emergency responders to develop emergency exercise schedules, but would remove the minimum frequency requirement for field exercises, and allow facility owners to work with local responders to establish appropriate frequencies and plans for exercises. Would these changes help to address petitioners' and commenters' concerns about the excessive costs of the exercise provisions? Should EPA make other changes to these provisions, or fully rescind the field and tabletop

exercise provisions in order to further reduce costs? If EPA were to fully rescind the exercise provisions, would the remaining requirements of the RMP Amendments rule for annual notification drills (§ 68.96(a)), enhanced emergency response coordination (§ 68.93 – with proposed modifications), and enhanced emergency response program updates (§ 68.95(a)(4)) be sufficient to address the emergency response planning and coordination gaps highlighted by the West Fertilizer incident and other incidents noted by EPA in the proposed RMP Amendments rule, while reducing undue burdens on facilities and local emergency responders as much as reasonably possible? Are there additional modifications or rescissions that EPA should make in order to further reduce costs, without significantly impacting public health and environmental protection?

*E. Revise compliance dates to provide necessary time for program changes*

Petitioner CSAG recommended that EPA delay the compliance dates for the same period by which the effective date of the rule was extended.<sup>60</sup> Petitioner States made the same recommendation.<sup>61</sup> In the final rule to delay the effective date of the RMP Amendments, EPA did not adjust the rule's compliance dates, indicating that the Agency would propose to take such action as necessary when considering future regulatory action.<sup>62</sup> EPA now proposes to delay the rule's compliance dates to one year after the effective date of a final rule for the emergency coordination provisions, two years after the effective date of a final rule for the public meeting provision, four years after the effective date of a final rule for the emergency exercise provisions, and five years after the effective date of a final rule for the risk management plan reporting provisions affected by new requirements. EPA is also retaining the requirement to comply with

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<sup>60</sup> CSAG Petition, pg. 1, EPA-HQ-OEM-2015-0725-0766.

<sup>61</sup> States Petition, pg. 1, EPA-HQ-OEM-2015-0725-0762.

<sup>62</sup> See 82 FR 27142, June 14, 2017.

the emergency response program requirements of § 68.95 within three years of when the owner or operator initially determines that the stationary source is subject to those requirements.

Except for the new proposed compliance date for public meetings, these proposed compliance dates would toll the compliance dates established under the final Amendments rule, using the same one-year compliance interval for the emergency coordination provision, four-year compliance interval for the exercise provisions, and five-year compliance interval for new or modified risk management plan reporting provisions, that were used under the final Amendments rule, but establishing the new compliance dates relative to the future effective date of a final rule resulting from this proposal. In so doing, EPA is relying on the same rationale it used in establishing compliance dates under the final Amendments rule.<sup>63</sup> We believe the guidances and outreach materials we had committed to developing in the final RMP Amendments will still be useful to sources seeking to comply with those portions of our rule that we do not rescind. EPA will need time to develop that material. EPA also agrees with CSAG and the States that regulated sources and local responders should not be expected to expend resources complying with rule provisions that may change, and that owners and operators will require this additional time to familiarize themselves with the revised rule and implement appropriate programmatic changes.

EPA is proposing a different compliance date for public meetings than that established under the final Amendments rule because with the proposed rescission of the other information availability requirements of the final Amendments rule, EPA believes that sources would not require four years to prepare to conduct post-accident public meetings. See Section III.F – *Revise compliance dates* above for further discussion of this proposed change.

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<sup>63</sup> See 82 FR 4675-8, January 13, 2017.

EPA is also proposing one modification to the compliance date for emergency exercises. Under the final amendments rule, EPA required that owners and operators comply with the emergency exercise provisions by four years after the effective date of the final rule. As EPA explained in the final rule, this meant that the owner or operator must have completed a notification exercise, consulted with local emergency response officials to establish a schedule for conducting tabletop and field exercises, and completed at least one field or tabletop exercise by the compliance date. Under the current proposal, owners and operators would be still be required to have exercise programs and schedules meeting the requirements of § 68.96 in place within four years of the effective date of a final rule. However, the owner or operator would not be required to have completed a notification and field or tabletop exercise by that date. Based on the schedule established by the owner or operator in coordination with local response agencies, the owner or operator would have up to one additional year to perform their first notification drill, and up to three additional years to conduct their first tabletop exercise. There would be no specified deadline date for the first field exercise, other than that established in the owner or operator's exercise schedule.

EPA is proposing this change to avoid overburdening facilities and local responders in meeting exercise requirements. Requiring every facility to complete notification and field or tabletop exercises by the compliance date would likely result in many exercises occurring at or near the compliance date. In communities with multiple RMP facilities, this could result in excessive demands on local responders to participate in notification drills and exercises, and be inconsistent with EPA's desire to give facilities and local responders more flexibility in scheduling and conducting exercises. EPA believes that a better approach would be to allow facilities and local responders to work together to establish an appropriate schedule by the

compliance date. In communities with multiple RMP facilities, this should allow facilities and local responders to conduct required exercises at more appropriate intervals, avoid concentrating numerous exercises around one date, provide more regular training opportunities for facility and local responders, and take full advantage of opportunities to conduct joint exercises or combine RMP facility exercises with exercises conducted under other requirements. EPA requests public comment on its proposal to extend compliance dates, including the proposed new compliance date for public meetings and the proposed modification to the compliance date for exercises.

In addition to recommending that EPA toll the rule's compliance dates, Petitioner CSAG indicated particular concern with the four-year compliance date for STAA:<sup>64</sup>

CSAG is concerned with the four-year compliance deadline provided in the rule for the STAA requirements. Such analysis is highly complex, and—given that the STAA would have to be part of the PHA for a covered process within four years—facilities will have to begin working immediately on incorporating this analysis without a commonly accepted methodology. In the RMP Rule preamble, EPA notes future “guidance” that will be developed for complying with RMP PHA and STAA requirements before sources must comply with the STAA provision and its plans to make draft guidance available for public comment.<sup>42</sup> Without the benefit of this guidance to reflect its intentions with respect to enforcement of the STAA provision, complying with the new requirements within four years will be extremely challenging.

<sup>42</sup>82 FR 4640, [January 13, 2017].

If EPA finalizes its proposal to rescind the STAA provisions, CSAG's concern with the compliance date for STAA would be rendered moot. However, in the event that EPA does not rescind the STAA provisions, the Agency requests public comment on whether the compliance date for STAA should be further extended. For example, should EPA extend the STAA compliance date to 5 years or some longer interval, so that all facilities subject to it would have the opportunity to incorporate the STAA into their PHA during their regular PHA revalidation

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<sup>64</sup> CSAG Petition, pg. 16, EPA-HQ-OEM-2015-0725-0766.



cycle? Alternatively, should EPA require STAA in PHAs performed after a certain date, such as 3 or 4 years after promulgation of a final rule?

*F. Other issues raised by petitioners*

In addition to the issues discussed previously, petitioners raised several other issues that EPA would like to address.

1. New documents entered in docket after close of comment period

The RMP Coalition indicated that EPA added numerous documents to the rulemaking docket after the close of the comment period, that EPA used several of these to support core provisions of the final rule, and that members of the public were not able to submit comments on these documents.<sup>65,66</sup>

EPA added 129 documents to the rulemaking docket after the end of the public comment period. Many of these documents (59 total) were documents that would normally be added after the comment period, such as final interagency review documents, final rule support documents (RIA, technical background document, EPA response to comments), documentation of tribal consultation, EPA responses to requests to extend the comment period, and documentation of post-proposal meetings or presentations of the proposed rulemaking that occurred after the end of the comment period. Also included were copies of laws, statutes, Federal or state regulations, Federal Register document that were mentioned in the final rule, RIA or Response to Comments, but not the proposed rulemaking or RIA. These were added for convenience although they are generally publicly available from Internet sources. There were also a few documents that were cited in the final rule or RIA, but were published in 2016 after the close of comment period on May 13, 2016. Of the remaining 70 documents, some were technical articles, reports, studies

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<sup>65</sup> RMP Coalition Petition, pg. 5, EPA-HQ-OEM-2015-0725-0759.

<sup>66</sup> Ibid, pgs. 5-6

(some mentioned by commenters), and EPA enforcement cases or press releases relevant to discussion of third party audits, STAA feasibility, near misses or root cause analysis that were added in the final rule and RIA or Response to Comments. Other documents were internal EPA email communications involving the development of the proposed RMP amendments provisions or estimating the rule's costs, and some EPA and OSHA documents related to RMP or PSM program guidance and enforcement.

To the extent EPA may have relied on these documents to support the third-party audit and STAA provisions of the final RMP Amendments rule without providing the public with full opportunity for review and comment, this point will become moot if the Agency rescinds those provisions, as we have proposed herein. Nevertheless, the documents are now available for public review in the rulemaking docket. A list of these 129 rule support documents is also available in the rulemaking docket.<sup>67</sup>

## 2. New third-party audit trigger and new legal rationales for third-party audits and STAA

The RMP Coalition stated that in the final RMP Amendments rule, EPA added a new trigger [criterion] for third-party audits<sup>68</sup> as well as new legal rationales for third-party audits and STAA, and that members of the public did not have an opportunity to review and comment on the new provision or legal rationales:

Though EPA claims that it only “modifie[d] the criterion,” the Final Rule provision transformed a predictable trigger (non-compliance with specific regulations) into an unpredictable one that relies entirely on the implementing agency’s discretion to determine which conditions “*could* lead to an accidental release.” [82 Fed. Reg. at 4699.] The Proposed Rule had identified a specific condition EPA thought was problematic, namely noncompliance with the regulations. The Final Rule provision is unrelated to

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<sup>67</sup> List of 129 Supporting Documents for RMP Amendments Rule Added to Rulemaking Docket EPA-HQ-OEM-2015-0725 after Close of Comment Period (May 13, 2016). USEPA, Office of Emergency Management, April 25, 2018.

<sup>68</sup> RMP Coalition Petition, pg. 5, EPA-HQ-OEM-2015-0725-0759.

legal compliance and subject to the whims and imagination of the implementing agency. Commenters had no opportunity to object to the incredible breadth of a requirement that covers any conditions that *could* lead, no matter how remote the chance of the condition resulting an accidental release. (footnote omitted)

In the Proposed Rulemaking, EPA proposed changes to §§ 68.58 and 68.79 to require third-party compliance audits for both Program 2 and Program 3 processes, under certain conditions. These proposed changes included adding paragraph (f) to §§ 68.58 and 68.79 which identified third-party audit applicability. EPA proposed that the next required compliance audit for an RMP facility would be a third-party audit when one of the following conditions apply: an accidental release meeting the criteria in § 68.42(a) from a covered process has occurred; or an implementing agency requires a third-party audit based on non-compliance with the requirements of this subpart, including when a previous third-party audit failed to meet the competency, independence, or impartiality criteria, set forth in new paragraphs §§ 68.59(b) or 68.80(b).

After considering public comments received on the proposed conditions that would require a third-party audit, in the final Amendments Rule, EPA revised the applicability criteria for third-party audits required by implementing agencies from non-compliance to conditions that could lead to an accidental release of a regulated substance. EPA believed that having the implementing agency evaluate whether conditions exist at a stationary source that could lead to an accidental release better addressed the types of situations where a third-party audit would be most effective, and would minimize the potential for inconsistent or arbitrary decisions made by implementing agencies. This revised criterion responded to commenters' requests was not intended to be a new condition, but a narrowing of the applicability of these requirements. The criterion in the Final Rule focused on conditions with the potential to lead to accidental releases, rather than authorizing implementing agencies to require third-party audits under a potentially

wide range of circumstances, including minor non-compliance. However, insofar as it is a change, the petitioner correctly notes that the public did not have a chance to comment on the new language.

EPA is proposing to rescind the third-party audit requirements; however, if these requirements are not rescinded, EPA requests comment on the revised applicability criteria for third-party audits required by implementing agencies from non-compliance to conditions that could lead to an accidental release of a regulated substance.

3. Coordination and emergency response provisions constitute unfunded mandates on state and local responders.

Petitioners CSAG and the States argued that the coordination and emergency response provisions of the final rule constitute unfunded mandates and impose unjustified burdens on state and local emergency responders.<sup>69</sup> As an initial matter, EPA notes that these objections would not meet the standard for reconsideration under CAA section 307(d)(7)(B), because the same objections were raised during the comment period for the proposed RMP Amendments rule, and responded to by EPA in the Response to Comments document for the rule.<sup>70</sup> However, EPA seeks comment on the Petitioners' claims that the coordination and emergency response provisions of the final rule constitute unfunded mandates.

## **V. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

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<sup>69</sup> See CSAG Petition, pgs. 8-9 and States Petition, pgs. 4-6.

<sup>70</sup> See Response to Comments document, pgs. 165-167, 185-186, 238, EPA-HQ-OEM-2015-0725-0729. See also States Petition at pg. 5 ("Various State and other entities raised these concerns during the comment period").

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared a Regulatory Impact Analysis (RIA) of the potential costs and benefits associated with this action. This RIA is available in the docket and is summarized here (Docket ID Number EPA-HQ-OEM-2015-0725).

#### 1. Why EPA is Considering this Action

This action addresses and responds to a number of issues related to the final RMP Amendments Rule, including those raised by petitioners, as well as other issues that EPA believes warrant reconsideration.

As discussed above in section I of this preamble, prior to the rule taking effect, EPA received three petitions for reconsideration of the rule under CAA section 307(d)(7)(B), two from industry groups and one from a group of states. Under that provision, the Administrator is to commence a reconsideration proceeding if, in the Administrator's judgement, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule.

In a letter dated March 13, 2017, the Administrator responded to the first of the reconsideration petitions received by announcing the convening of a proceeding for reconsideration of the Risk Management Program Amendments.<sup>71</sup> As explained in that letter, having considered the objections raised in the petition, the Administrator determined that the criteria for reconsideration have been met for at least one of the objections. This proposal

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<sup>71</sup> EPA-HQ-OEM-2015-0725-0758.

addresses the issues raised in all three petitions for reconsideration, as well as other issues that EPA believes warrant reconsideration. A detailed discussion of EPA's rationale for the rescissions and modifications to the rule is included above in section IV. of this preamble,

#### **Rationale for Rescissions and Modifications.**

As described in section IV. A. of this preamble, *Maintain consistency in accident prevention requirements*, this action addresses the issues raised by petitioners regarding several of the provisions of the final Amendments rule. Petitioners asserted that EPA failed to sufficiently coordinate the changes to the RMP regulations with OSHA and the PSM program, and that the regulations as revised by the Final Rule leave important gaps and create compliance uncertainties. Although EPA has regularly communicated and coordinated with OSHA on its efforts so far, EPA believes it is reasonable to develop a better understanding of OSHA's intentions regarding potential changes to the PSM standard before modifying the RMP rule. EPA has determined that a more sensible approach would be to rescind the RMP accident prevention amendments at this time and continue existing coordination with OSHA on any future regulatory changes.

All three petitions requesting reconsideration of the RMP Amendments rule raised security concerns regarding provisions of the final Amendments rule, as discussed above in section IV. B. of this preamble, *Address security concerns*. These included objections, in all three petitions, regarding the rule language in § 68.93(b) requiring local emergency response coordination to include providing to the local emergency planning and response organizations "...any other information that local emergency planning and response organizations identify as relevant to local emergency response planning." Petitioners claim that this language creates a security risk for regulated facilities. Petitioners have also noted concerns regarding the removal

of protections for CBI and classified information that items proposed under § 68.205 would have benefited from. Petitioners also raised concerns about the potential for the information made available under § 68.210 of the RMP Amendments rule to be used by criminals or terrorists to target facilities for attack. EPA is also considering another security concern not specifically raised by petitioners, regarding whether the synthesis of the required information disclosure elements could create an additional security risk for facilities.

As discussed in section IV.C. of this preamble, *Address BATF finding on West Fertilizer incident*, above, petitioners asserted that it was impracticable for commenters to address in their comments the significance of the May 11, 2016 determination by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF) that the fire and explosion at the West Fertilizer facility was caused by an intentional, criminal act. In responding to this petition, EPA Administrator Pruitt agreed that the timing of the BATF finding was a valid basis for reconsideration of the RMP Amendments rule.<sup>72</sup>

All three petitioners objected to the costs and burdens associated with the new provisions of the RMP Amendments rule, and claimed that EPA's economic analysis did not accurately assess the costs of new provisions and violated procedural requirements by not properly quantifying potential benefits. Petitioners submitted extensive commentary on these issues (complete copies of each petition are available in the docket for this rulemaking). A discussion of this issue is included above in section IV.D. of this preamble, *Reduce unnecessary regulations and regulatory costs*.

This action also considers and addresses several other issues raised by petitioners. One petitioner noted that EPA added numerous documents to the rulemaking docket after the close of

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<sup>72</sup> March 13, 2017 letter from EPA Administrator E. Scott Pruitt to Justin Savage, Esq., Hogan Lovells US LLP. Letter available in the docket for this rulemaking. EPA-HQ-OEM-2015-0725-0758.

the comment period, that EPA used several of these to support core provisions of the final rule, and that members of the public were not able to submit comments on these documents.<sup>73,74</sup>

Petitioner the RMP Coalition stated that in the final RMP Amendments rule, EPA added a new trigger for third-party audits as well as new legal rationales for third-party audits and STAA, and that members of the public did not have an opportunity to review and comment on the new provision or legal rationales. Petitioners CSAG and the States argued that the coordination and emergency response provisions of the final rule constitute unfunded mandates and impose unjustified burdens on state and local emergency responders. These issues are discussed in more detail in section IV. F. of this preamble, *Other issues raised by petitioners*.

## 2. Description of Alternatives to the Proposed Rule

The RIA analyzed the proposed rescissions and changes to the requirements of the RMP Amendments rule, including one alternative option for emergency tabletop and field exercises. The proposed rulemaking would retain the requirement for tabletop and field exercises, but remove the minimum frequency requirement for field exercises and establish more flexible scope and documentation provisions for both field and tabletop exercises. Although these changes are intended to reduce the burden of and offer more flexibility to owners and local response agencies in meeting the exercise requirements, the RIA took the conservative approach of assuming that the cost of the provision as estimated under the Amendments final rule would not change. EPA is considering two alternatives to the proposed exercise provisions. One alternative would be similar to the proposed option – this alternative would remove the minimum frequency requirement for field exercises, but unlike the proposed option, the alternative would retain all remaining provisions of the RMP Amendments rule regarding field and tabletop exercises,

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<sup>73</sup> RMP Coalition Petition, pg. 5, EPA-HQ-OEM-2015-0725-0759.

<sup>74</sup> Ibid, pgs. 5-6



including the RMP Amendments rule requirements for exercise scope and documentation. Like the proposed option, EPA assumes that the cost of the exercise provisions as estimated under the Amendments final rule would not change under this alternative. Another, lower-cost alternative to EPA's proposal would be to fully rescind the field and tabletop exercise provisions. This alternative would result in an additional annual cost savings of approximately \$24.7 million (2015 dollars).

EPA is also considering an alternative to the proposed modification to the emergency coordination provisions of the Amendments rule. EPA's proposed modification to the local emergency response coordination amendments would delete the phrase in § 68.93(b), "...and any other information that local emergency planning and response organizations identify as relevant to local emergency response planning." As an alternative to this proposal, EPA is considering replace this phrase with the phrase "other information necessary for developing and implementing the local emergency response plan." However, EPA does not believe either its proposed option or the alternative phrasing would significantly affect the cost of complying with the emergency coordination provisions of the Amendments rule.

Lastly, EPA is considering an alternative to rescinding the availability of all chemical hazard information to the public under the final Amendments rule. Under this alternative, EPA would rescind all elements required to be disclosed under § 68.210(b) of the final Amendments rule except the information on exercise schedules. If EPA were to adopt this alternative, the annual net cost savings under the proposed rule would decline by up to \$3.1 million.

### 3. Summary of Cost Savings

Approximately 12,500 facilities have filed current RMPs with EPA and are potentially affected by the proposed rule changes. These facilities range from petroleum refineries and large

chemical manufacturers to water and wastewater treatment systems; chemical and petroleum wholesalers and terminals; food manufacturers, packing plants, and other cold storage facilities with ammonia refrigeration systems; agricultural chemical distributors; midstream gas plants; and a limited number of other sources that use RMP-regulated substances.

Table 5 presents the number of facilities according to the latest RMP reporting as of February 2015 by industrial sector and chemical use.

TABLE 5 - NUMBER OF AFFECTED FACILITIES BY SECTOR

Sector	NAICS Codes	Total Facilities	Chemical Uses
Administration of environmental quality programs (i.e., governments)	924	1,923	Use chlorine and other chemicals for treatment
Agricultural chemical distributors/wholesalers	111, 112, 115, 42491	3,667	Store ammonia for sale; some in NAICS 111 and 115 use ammonia as a refrigerant
Chemical manufacturing	325	1,466	Manufacture, process, store
Chemical wholesalers	4246	333	Store for sale
Food and beverage manufacturing	311, 312	1,476	Use (mostly ammonia as a refrigerant)
Oil and gas extraction	211	741	Intermediate processing (mostly regulated flammable substances and flammable mixtures)
Other	44, 45, 48, 54, 56, 61, 72	248	Use chemicals for wastewater treatment, refrigeration, store chemicals for sale
Other manufacturing	313, 326, 327, 33	384	Use various chemicals in manufacturing process, waste treatment
Other wholesale	423, 424	302	Use (mostly ammonia as a refrigerant)
Paper manufacturing	322	70	Use various chemicals in pulp and paper manufacturing
Petroleum and coal products manufacturing	324	156	Manufacture, process, store (mostly regulated flammable substances and flammable

			mixtures)
Petroleum wholesalers	4247	276	Store for sale (mostly regulated flammable substances and flammable mixtures)
Utilities	221 (except 22131, 22132)	343	Use chlorine (mostly for water treatment)
Warehousing and storage	493	1,056	Use mostly ammonia as a refrigerant
Water/wastewater Treatment Systems	22131, 22132	102	Use chlorine and other chemicals
<b>Total</b>		<b>12,542</b>	

Table 6 presents a summary of the annualized cost savings estimated in the regulatory impact analysis.<sup>75</sup> In total, EPA estimates annualized cost savings of \$87.9 million at a 3% discount rate and \$88.4 million at a 7% discount rate.

TABLE 6 - SUMMARY OF ANNUALIZED COST SAVINGS (MILLIONS, 2015 DOLLARS)

<b>Provision</b>	<b>3%</b>	<b>7%</b>
Third-party Audits	(9.8)	(9.8)
Incident Investigation/Root Cause	(1.8)	(1.8)
STAA	(70.0)	(70.0)
Information Availability	(3.1)	(3.1)
Rule Familiarization	(3.2)	(3.7)
Total Cost Savings	(87.9)	(88.4)

Most of the annual cost savings under the proposed rulemaking are due to the repeal of the STAA provision (annual savings of \$70 million), followed by third party audits (annual savings of \$9.8 million), rule familiarization (annual net savings of \$3.7 million), rule

<sup>75</sup> A full description of costs and benefits for this proposed rule can be found in the *Regulatory Impact Analysis; Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7)*. This document is available in the docket for this rulemaking (Docket ID Number EPA-HQ-OEM-2015-0725).

familiarization (annual net savings of \$3.7 million), information availability (annual savings of \$3.1 million), and root cause incident investigation (annual savings of \$1.8 million). See the RIA for additional information on costs and cost savings.

#### 4. Summary of Potential Benefits and Benefit Reductions

The RMP Amendments Rule produced a variety of benefits from prevention and mitigation of future RMP and non-RMP accidents at RMP facilities, avoided catastrophes at RMP facilities, and easier access to facility chemical hazard information. The proposed Reconsideration rule would largely retain the revised local emergency coordination and exercise provisions of the 2017 Amendments final rule, which convey mitigation benefits. The proposed rescission of the prevention program requirements (i.e., third-party audits, incident investigation, STAA), would result in a reduction in the magnitude of these benefits. The proposed rescission of the chemical hazard information availability provision would result in a reduction of the information sharing benefit, although a portion of this benefit from the Amendments rule would still be conveyed by the public meeting, emergency coordination and exercise provisions. The proposed rule would also convey the benefit of improved chemical site security, by modifying previously open-ended information sharing provisions of the Amendments rule that might have resulted in an increased risk of terrorism against regulated sources. See the RIA for additional information on benefits and benefit reductions.

#### *B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs*

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.<sup>76</sup>

*C. Paperwork Reduction Act (PRA)*

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2537.03. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The ICR that covers the risk management program rule, promulgated on June 20, 1996; including previous amendments, codified as 40 CFR part 68, is ICR number 1656.15, OMB Control No. 2050-0144. This ICR (2537.03) addresses the following information requirements that were promulgated in the final RMP Amendments rule and not proposed to be rescinded by the proposed revision to the rule:

*Improve information availability (applies to all facilities)*

1. Hold a public meeting within 90 days of an accident subject to reporting under § 68.42 (i.e., an RMP reportable accident) and for this accident provide the accident information required under § 68.42 (b).

*Improve emergency preparedness (applies to P2 and P3 facilities)*

2. Meet and coordinate with local responders annually to exchange emergency planning information and coordinate exercise schedules. Responding facilities' updates of their

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<sup>76</sup> See "Regulatory Impact Analysis; Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7)", in docket EPA-HQ-OEM-2015-0725.

facility emergency response plans will include appropriate changes based on information obtained from coordination activities, emergency response exercises, incident investigations or other information. Emergency response plans will have procedures for informing appropriate Federal and state emergency response agencies, as well as local agencies and the public (informing local agencies and the public is already required under the original rule).

3. Conduct an annual notification drill with emergency responders to verify emergency contact information.
4. Responding facilities conduct and document emergency response exercises including:
  - a. Field exercises according to a schedule established by the facility in consultation with local responders, and;
  - b. A tabletop exercise at least every three years.

*Respondents/affected entities:* Manufacturers, utilities, warehouses, wholesalers, food processors, ammonia retailers, and gas processors.

*Respondent's obligation to respond:* Mandatory (CAA sections 112(r)(7)(B)(i) and (ii), CAA section 112(r)(7)(B)(iii), 114(c), CAA 114(a)(1)).

*Estimated number of respondents:* 14,280

*Frequency of response:* On occasion.

*Total estimated burden:* 682,665 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$44,712,465 (per year), includes \$83,600 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA will respond to any ICR-related comments in the final rule.

#### *D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

The RMP Amendments final rule considered a broad range of costs on small entities based on facility type. As estimated in the 2017 Amendments RIA, the provisions in that final rule had quantifiable impacts on small entities. This proposed rule largely repeals, or retains with slight modification, the provisions incurring costs on small entities. As a result, EPA expects the

proposed rule to impose negative costs for all facilities, including small entities. The only new costs imposed on small entities would be rule familiarization with the proposed rule, but even that cost would be offset by savings associated with eliminating the larger costs associated with becoming familiar with the RMP Amendments final rule. The impact of this proposed rule on small entities is discussed further in the RIA, which is available in the rulemaking docket.<sup>77</sup> We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. EPA will be consulting with tribal officials as it develops this regulation to permit them to have meaningful and timely input into its development. Consultation will include conversations with interested tribal representatives to ensure that their concerns are addressed before the rule is

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<sup>77</sup> See “Regulatory Impact Analysis; Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7)”, Chapter 7, EPA-HQ-OEM-2015-0725.



finalized. In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

*H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the RIA for this proposed rule, available in the docket.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This proposed action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed action is not anticipated to have notable impacts on emissions, costs or energy supply decisions for the affected electric utility industry.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action may have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in chapter 8 of the Regulatory Impact Analysis (RIA), a copy of which has been placed in the public docket for this action.

#### List of Subjects

##### **40 CFR part 68**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 17, 2018.

E. Scott Pruitt,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 68, of the Code of Federal Regulations is proposed to be amended as follows:

## **PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS**

1. The authority citation for part 68 continues to read as follows:

**Authority:** 42 U.S.C. 7412(r), 7601(a)(1), 7661-7661f.

### **§ 68.3 [Amended]**

2. Amend § 68.3 by removing the definitions “Active measures”, “Inherently safer technology or design”, “Passives measures”, “Practicability”, “Procedural measures”, “Root cause” and “Third-party audit”.

3. Amend § 68.10 by:

- a. Revising paragraphs (b), (d), and (e);
- b. Redesignating paragraphs (f) through (j) as paragraphs (g) through (k); and
- c. Adding new paragraph (f).

The revisions read as follows:

### **§ 68.10 Applicability.**

\* \* \* \* \*

(b) By [DATE 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the owner or operator of a stationary source shall comply with the emergency response coordination activities in § 68.93.

\* \* \* \* \*

(d) By [DATE 4 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the owner or operator shall have developed plans for conducting emergency response exercises in accordance with provisions of § 68.96.

(e) After[DATE 2 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] the owner or operator of a stationary source shall comply with the public meeting requirement in § 68.210(b) for any accident meeting the five-year accident history requirements of § 68.42 that occurs after [DATE 2 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(f) By [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the owner or operator shall comply with § 68.160 (b)(21) of the risk management plan provisions of subpart G of this part promulgated on [PUBLICATION DATE OF FINAL RULE] and with § 68.180 of the risk management plan provisions of subpart G of this part promulgated on January 13, 2017.

\* \* \* \* \*

#### **§ 68.12 [Amended]**

4. Amend § 68.12 by:

a. In paragraph (b):

1. In the introductory text removing the text “68.10(b)” and adding “68.10(g)” in its place;
2. In paragraph (4) second sentence, removing the text “68.10(b)(1)” and adding “68.10(g)(1)” in its place;

b. In paragraph (c) introductory text by removing the text “68.10(c)” and adding “68.10(h)” in its place;

c. In paragraph (d) introductory text by removing the text “68.10(d)” and adding “68.10(i)” in its place.

5. Amend § 68.50 by revising paragraph (a)(2) to read as follows:

#### **§ 68.50 Hazard review.**

(a) \* \* \*

(2) Opportunities for equipment malfunctions or human errors that could cause an accidental release;

\* \* \* \* \*

6. Amend § 68.54 by revising the first sentence in paragraphs (a) and (b), paragraph (d), and removing paragraph (e) to read as follows:

**§ 68.54 Training.**

(a) The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties. \* \* \*

(b) *Refresher training.* Refresher training shall be provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. \* \* \*

\* \* \* \* \*

(d) The owner or operator shall ensure that operators are trained in any updated or new procedures prior to startup of a process after a major change.

7. Amend § 68.58 by revising paragraph (a) and removing paragraphs (f) through (h) to read as follows:

**§ 68.58 Compliance audits.**

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under this subpart are adequate and are being followed.

\* \* \* \* \*

**§ 68.59 [Removed]**

8. Remove § 68.59.

9. Amend § 68.60 by:

- a. Revising paragraph (a);
- b. Removing paragraph (c);
- c. Redesignating paragraph (d) as paragraph (c)
- d. In the newly designated paragraph (c):
  1. Revising the paragraph introductory text, and paragraphs (1) and (3);
  2. Removing paragraphs (4) through (6);
  3. Redesignating paragraphs (7) and (8) as paragraphs (4) and (5); and
  4. Revising the newly designated paragraphs (4) and (5);
- e. Redesignating paragraphs (e) through (g) as paragraphs (d) through (f); and
- f. Revising newly redesignated paragraph (f).

The revisions read as follows:

**§ 68.60 Incident investigation.**

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

\* \* \* \* \*

(c) A summary shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

\* \* \* \* \*

(3) A description of the incident;

- (4) The factors that contributed to the incident; and,
- (5) Any recommendations resulting from the investigation.

\* \* \* \* \*

- (f) Investigation summaries shall be retained for five years.

10. Amend § 68.65 by revising the first sentence of paragraph (a) and revising the note to paragraph (b) to read as follows:

**§ 68.65 Process safety information.**

- (a) In accordance with the schedule set forth in § 68.67, the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. \* \* \*

- (b) \* \* \*

NOTE TO PARAGRAPH (b): Safety Data Sheets (SDS) meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by paragraph (b) of this section.

11. Amend § 68.67 by:

- a. Revising paragraphs (c)(2);
- b. Amending (c)(6) by adding the word “and” at the end of the paragraph;
- c. Amending paragraph (c)(7) by removing “, and” and adding a period at the end of the paragraph; and
- d. Removing paragraph (c)(8).

The revisions read as follows:

**§ 68.67 Process hazard analysis.**

\* \* \* \* \*

(c) \* \* \*

(2) The identification of any previous incident which had a likely potential for catastrophic consequences;

\* \* \* \* \*

**§ 68.71 [Amended]**

12. Amend § 68.71 by removing paragraph (d).

13. Amend § 68.79 by revising paragraph (a) and removing paragraphs (f) through (h) to read as follows:

**§ 68.79 Compliance audits.**

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

\* \* \* \* \*

**§ 68.80 [Removed]**

14. Remove § 68.80.

15. Amend § 68.81 by revising paragraphs (a) and (d) to read as follows:

**§ 68.81 Incident investigation.**

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

\* \* \* \* \*

(d) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;



- (2) Date investigation began;
- (3) A description of the incident;
- (4) The factors that contributed to the incident; and,
- (5) Any recommendations resulting from the investigation.

\* \* \* \* \*

16. Amend § 68.93 by revising paragraph (b) and adding paragraphs (d) and (e) to read as follows:

**§ 68.93 Emergency response coordination activities.**

\* \* \* \* \*

(b) Coordination shall include providing to the local emergency planning and response organizations: The stationary source's emergency response plan if one exists; emergency action plan; and updated emergency contact information. For responding stationary sources, coordination shall also include consulting with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b). The owner or operator shall request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss those materials.

\* \* \* \* \*

(d) *Classified information.* The disclosure of information classified by the Department of Defense or other Federal agencies or contractors of such agencies shall be controlled by applicable laws, regulations, or executive orders concerning the release of classified information.

(e) *CBI.* An owner or operator asserting CBI for information required under this section shall provide a sanitized version to the local emergency planning and response organizations.

Assertion of claims of CBI and substantiation of CBI claims shall be in the same manner as required in §§ 68.151 and 68.152 for information contained in the RMP required under subpart G. As provided under § 68.151(b)(3), an owner or operator of a stationary source may not claim five-year accident history information as CBI. As provided in § 68.151(c)(2), an owner or operator of a stationary source asserting that a chemical name is CBI shall provide a generic category or class name as a substitute.

17. Amend § 68.96 by:

- a. Revising the first sentence of paragraph (a);
- b. Revising paragraph (b)(1)(i) and (ii);
- c. Revising paragraph (b)(2)(i) and (ii); and
- d. Revising paragraph (b)(3).

The revisions read as follows:

**§ 68.96 Emergency response exercises.**

(a) *Notification exercises.* At least once each calendar year, the owner or operator of a stationary source with any Program 2 or Program 3 process shall conduct an exercise of the source's emergency response notification mechanisms required under § 68.90(b)(3) or § 68.95(a)(1)(i), as appropriate, before [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE] and annually thereafter. \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Frequency.* As part of coordination with local emergency response officials required by § 68.93, the owner or operator shall consult with these officials to establish an appropriate frequency for field exercises.

(ii) *Scope.* Field exercises should include: tests of procedures to notify the public and the appropriate Federal, state, and local emergency response agencies about an accidental release; tests of procedures and measures for emergency response actions including evacuations and medical treatment; tests of communications systems; mobilization of facility emergency response personnel, including contractors, as appropriate; coordination with local emergency responders; emergency response equipment deployment; and any other action identified in the emergency response program, as appropriate.

(2) \* \* \*

(i) *Frequency.* As part of coordination with local emergency response officials required by § 68.93, the owner or operator shall consult with these officials to establish an appropriate frequency for tabletop exercises, and shall conduct a tabletop exercise before [DATE 7 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] and at a minimum of at least once every three years thereafter.

(ii) *Scope.* The exercise should include discussions of: procedures to notify the public and the appropriate Federal, state, and local emergency response agencies; procedures and measures for emergency response including evacuations and medical treatment; identification of facility emergency response personnel and/or contractors and their responsibilities; coordination with local emergency responders; procedures for emergency response equipment deployment; and any other action identified in the emergency response plan, as appropriate.

(3) *Documentation.* The owner/operator shall prepare an evaluation report within 90 days of each exercise. The report should include: A description of the exercise scenario; names and organizations of each participant; an evaluation of the exercise results including lessons learned; recommendations for improvement or revisions to the emergency response exercise

program and emergency response program, and a schedule to promptly address and resolve recommendations.

\* \* \* \* \*

18. Amend § 68.160 by revising paragraph (b)(21) and removing paragraph (b)(22) to read as follows:

**§ 68.160 Registration.**

\* \* \* \* \*

(b) \* \* \*

(21) Whether a public meeting has been held following an RMP reportable accident, pursuant to § 68.210(b).

19. Amend § 68.170 by revising paragraph (i) to read as follows:

**§ 68.170 Prevention program/Program 2.**

\* \* \* \* \*

(i) The date of the most recent compliance audit, the expected date of completion of any changes resulting from the compliance audit.

\* \* \* \* \*

20. Amend § 68.175 by:

- a. Revising paragraph (e) introductory text and paragraphs (e)(1), (5) and (6);
- b. Removing paragraph (e)(7); and
- c. Revising paragraph (k).

The revisions read as follows:

**§ 68.175 Prevention program/Program 3.**

\* \* \* \* \*

(e) The date of completion of the most recent PHA or update and the technique used.

(1) The expected date of completion of any changes resulting from the PHA;

\* \* \*

(5) Monitoring and detection systems in use; and

(6) Changes since the last PHA.

\* \* \* \* \*

(k) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit.

\* \* \* \* \*

21. Amend § 68.180 by revising paragraph (a)(1) to read as follows:

**§ 68.180 Emergency response program and exercises.**

(a) \* \* \*

(1) Name, phone number and email address of local emergency planning and response organizations with which the stationary source last coordinated emergency response efforts, pursuant to § 68.10(g)(3) or § 68.93.

\* \* \* \* \*

22. Amend § 68.190 by revising paragraph (c) to read as follows:

**§ 68.190 Updates.**

\* \* \* \* \*

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a de-registration to EPA within six months indicating that the stationary source is no longer covered.

23. Amend § 68.210 by:

- a. Removing paragraphs (b), (c), (d), and (g);
- b. Redesignating paragraph (e) and (f) as paragraphs (b) and (c); and
- c. Revising newly redesignated paragraph (b).

The revision reads as follows:

**§ 68.210 Availability of information to the public.**

\* \* \* \* \*

(b) *Public meetings.* The owner or operator of a stationary source shall hold a public meeting to provide information required under § 68.42 (b), no later than 90 days after any accident subject to reporting under § 68.42.

\* \* \* \* \*

24. Amend § 68.215 by revising paragraph (a)(2)(i) to read as follows:

**§ 68.215 Permit content and air permitting authority or designated agency requirements.**

(a) \* \* \*

(2) \* \* \*

(i) A compliance schedule for meeting the requirements of this part by the date provided in § 68.10(a) through (f)

\* \* \* \* \*

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